Simplifying non-geographic numbers

Final statement on the unbundled tariff and making the 080 and 116 ranges free-to-caller

Statement

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Section 1

Executive Summary

Introduction

1.1 This statement sets out our decisions on changes to the regulation of non-geographic calls – specifically the 080, 084, 087, 09, 116 and 118 number ranges.

1.2 Consumers use these number ranges to call businesses, financial institutions, helplines and government agencies, to get information and to make payments for services. However, the evidence we have collected demonstrates that, due to the way the market functions, consumers generally have poor awareness of prices, are deterred from using these numbers, and the availability of services on these ranges is undermined.

1.3 Despite the growth of alternative ways to make contact or obtain information (for example internet, email and smartphone apps), the option to call organisations directly continues to be valued by consumers. For some groups of consumers, particularly vulnerable groups, voice calls are the only practical form of contact for some services. Therefore, as our analysis indicates that the market is not working well for consumers or for those being called, we consider that it is necessary for us to intervene.

1.4 In April this year we published a policy position which set out our view on the changes needed to the regulation of non-geographic call services (‘NGCS’) to address this consumer harm and consulted on the legal instruments required to implement this policy.[1] This statement presents our final conclusions on the changes and the legal instruments needed for implementation.

The NGCS review

1.5 We initiated this strategic review of non-geographic numbers in 2010 in response to concerns that consumers were confused about what these numbers meant and how much calls cost.[2] After detailed analysis, consumer and service provider research and discussions with industry, we came to the view that there was clearly identified substantial consumer detriment arising from a number of interrelated market failures and this supported the case for a reform of the market, including simplification of the system to protect consumers from that harm.

1.6 In summary we are concerned that consumers generally do not know how much these calls cost and often overestimate the costs. This is making consumers generally suspicious of these numbers and reluctant to use them. In turn this undermines innovation and service availability and, in the worst cases, leads to vulnerable consumers being deterred from easily accessing socially important services.

[1] ‘The April 2013 policy position’, available at: http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geo-no/
[2] We published a call for inputs in May 2010: http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geo-numbers/, followed by a consultation assessing different options in December 2010: http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geo-numbers/

1.7 We set out detailed proposals for reforming the market to address these concerns in April 2012 (the 'April 2012 consultation').[3] We proposed to:

- make 080 and 116 numbers free from all telephone lines (both fixed and mobile); and
- set a new 'unbundled tariff' structure for other non-geographic calls. This structure involves the separation of the retail price into an access charge charged by the phone company originating the call, and a service charge charged by the phone company terminating the call and the company which operates the service on that number (a bank or chatline for example).

1.8 We confirmed as part of that consultation that the 03 range would remain in its current form (linked to the price of a call to a geographic number, i.e. 01 and 02 numbers) but that it would be the only non-geographic number of this type. This meant that all 084 and 087 numbers would have a consistent tariff structure. We considered that this would reduce the existing confusion about the charges for 0845 and 0870 numbers which has arisen because the traditional link between these ranges and geographic call prices had been undermined.

The April 2013 policy position

1.9 Following a detailed consideration of stakeholder responses to the April 2012 consultation, in April this year we published a policy position (the 'April 2013 policy position')[4] which confirmed our view that the changes we had previously proposed to non-geographic numbers offered the most appropriate and proportionate means of addressing the consumer concerns we had identified.

1.10 We did, however, make some updates and revisions to our assessment as a result of stakeholder comments made in response to the April 2012 consultation. We also carried out some further analysis on the impact of our proposals. Some of these revisions involved amendments to our analytical approach or new evidence, though none of the changes altered our overall view on the appropriate policy response. We highlighted these changes and offered stakeholders an opportunity to comment on them.

1.11 We therefore said our view on the introduction of the unbundled tariff and making the 080/116 number ranges free-to-caller was subject to final confirmation in light of those specific areas of further consultation.

1.12 The April 2013 policy position also set out our proposed modifications to a range of legal instruments that were necessary to implement our proposed changes to non-geographic numbers. In particular we proposed modifications to the existing General Conditions 12, 14, 17, 23 and 24, the Numbering Plan and the Premium Rate Services ('PRS') Condition. In addition, we proposed to set an access condition on communications providers that terminate calls to 080 and 116 numbers, and a condition that required companies (other than phone companies) to promote their charges when they were advertising an unbundled tariff number.

[3] http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geographic-no/
[4] http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geo-no/

European consultation on the 080 and 116 access condition

1.13 Under Article 7 of the Framework Directive (as amended), we are required to notify draft decisions on any access related conditions to the European Commission ('EC'), the Body of European Regulators for Electronic Communications ('BEREC') and other national regulatory authorities ('NRAs') upon completion of our domestic consultation. Our proposed access condition on communications providers that terminate 080 and 116 calls was therefore subject to this requirement.

1.14 On 22 October, having taken account of the consultation responses to the April 2013 policy position and having made modifications in the light of these comments, we notified our intended 080/116 access condition and an explanatory draft Statement to the EC, BEREC and other NRAs.[5]

1.15 On 22 November 2013, the EC issued a decision letter, setting out its comments under Article 7(3) of the Framework Directive. We discuss these comments in more detail in Section 4.

Summary of decisions in this statement

1.16 Having taken account of stakeholder responses to the April 2013 policy position, and having completed the European consultation process and taken utmost account of comments from the EC, this statement now confirms our decision:

- to set a maximum retail price of zero for calls made by consumers to the 080 and 116 number ranges; and

- to introduce the unbundled tariff for calls made by consumers to the 084, 087, 09 and 118 number ranges.

1.17 Taken together, these changes will simplify the UK's numbering system and allow consumers to gain a better understanding of what different numbers mean, as well as their cost.

Making 080 and 116 free-to-caller

1.18 We consider that making 080 and 116[6] numbers free-to-caller for consumers from all telephones will offer direct benefits to callers and organisations as well as being an important element in restoring trust in non-geographic numbers overall. The change will enable service providers on these ranges to advertise a clear message to consumers that these numbers are always free. This will encourage demand for services and improve consumer understanding of the ranges, as well as ensuring vulnerable consumers are not deterred from accessing socially important services provided on the ranges. Also, given the high profile nature of the 080 number range, we expect this change to contribute significantly to our efforts to improve consumer confidence in non-geographic numbers in general.

1.19 We recognise that this change will not be without cost, particularly for the service providers using 080 numbers who will have to pay more to ensure calls from mobiles are free, but we consider that the benefits (to both consumers and service providers)

[5] http://stakeholders.ofcom.org.uk/binaries/consultations/simplifying-non-geo-no/statement/statement.pdf

[6] 116 numbers are Harmonised European numbers for services of social value

outweigh these costs. However, we accept that it is likely that a minority of service providers that currently use the 080 range will opt to move their services away from that range to another non-geographic or geographic range. We consider that there will be less impact on companies using the 116 number range, as all actively used 116 numbers are already free-to-caller - making the entire 116 range free-to-caller will therefore only affect 116 numbers being brought into use in future.

1.20 We recognise that making the 080 and 116 ranges free-to-caller may prompt changes in wholesale arrangements and we want to minimise any period of uncertainty and avoid any delays or breakdowns in connectivity. Accordingly, as noted above, we are also imposing an access condition on terminating communications providers which will ensure that the commercial terms, including charges, for connecting such calls are fair and reasonable to all parties. In addition, we have also today published guidance on how we would be likely to assess what is a fair and reasonable wholesale charge for calls to 080 and 116 numbers if we were to receive a dispute ('080/116 Dispute Guidance').[7]

The unbundled tariff on the 084, 087, 09 and 118 number ranges

1.21 The introduction of the unbundled tariff will create a consistent treatment of all the 'revenue-sharing' number ranges by 'unbundling' the retail price for those calls.

1.22 The unbundled tariff will ensure consumers can know, for the first time, how much of their money is paid to their phone company and how much is passed to others, such as the organisation or service being called. It will require that, instead of paying a single charge to their phone company, they will pay two separate charges:

i) **the Access Charge**: which will be paid to the phone company which originates the call; and

ii) **the Service Charge**: which is paid to the phone company which terminates the call and may be shared with the service provider, i.e. the company providing a service using the number (a bank for example), to cover or contribute towards their costs.

1.23 In order to ensure these different charges are made transparent to consumers, we are setting rules about the structure of the access and service charges so that consumers can more readily understand and, where appropriate, remember them. These include:

- one access charge per tariff package, for calls to all unbundled non-geographic number ranges, though the access charge may be included in a bundle of inclusive minutes for some or all non-geographic numbers;
- the access charge to be set as a simple 'pence per minute' rate;
- each individual 084, 087, 09 or 118 number to have a single service charge that applies to calls to that number from all fixed and mobile phones;
- with the exception of 118, there will be caps on the maximum rate of the service charge, according to the unbundled non-geographic number range. For example,

[7] http://stakeholders.ofcom.org.uk/consultations/080-116-ranges/

the cap on the rate of the service charge for numbers in the 084 ranges will be 7p (inc. VAT) and the cap for numbers in the 087 range will be 13p (inc. VAT);

- phone companies to publicise the amount of the access charge for each tariff package they offer consumers; and

- organisations and service providers to include their service charge whenever the number is presented (i.e. in advertising and marketing).

1.24 Currently call cost descriptions follow the format:

> "this call will cost you X pence per minute on a BT line, other landline providers may vary and calls on mobiles may cost considerably more."

1.25 Under the new structure we expect the announcement to follow the format of :

> "This call will cost you X pence per minute plus your phone company's access charge."

1.26 The unbundled tariff will, we consider, provide significant benefits to consumers: clearer prices, better competition between phone companies and, perhaps, service providers, and reinvigorated consumer confidence in using these numbers.

1.27 As well as benefits for individual consumers, UK businesses stand to gain. Greater consumer confidence will in turn give UK businesses more confidence in using these services to be contacted by consumers and to provide new and innovative services to consumers.

Changes to our April 2013 policy position

1.28 Whilst the decisions in this statement confirm the overall position we set out in April 2013, there are some individual issues on which we have revised our position or on which we are providing more guidance in response to stakeholder comments. These are:

- **inclusion of the access charge in call bundles**: in April 2013 we provisionally concluded that where the access charge was included in a bundle of inclusive call minutes, that inclusion could not vary by number range. However, having considered stakeholder comments and in light of the risk that consumers may lose out if calls to these numbers are no longer included in call bundles, we have now decided that communications providers will be allowed to select the number ranges it wishes to include in call bundles. This means that, for example, a communications provider will be able to include only the access charge for the 0845 and 0870 ranges, or all the 084 ranges, in a bundle of inclusive call minutes offered to its customers without having to also include calls to the higher rated 09 and 118 ranges. See Section 3 and Annex 3 where we explain our reasoning for this decision;

- **service charge price points:** several stakeholders raised concerns about how the process for establishing service charge price points would work in practice in response to the April 2013 policy position. We recognise that guidance would be helpful to aid implementation and have therefore set out this guidance in Annex 4. This sets out a list of service charge price points for the 084/087, 09 and 118 number ranges which we have derived from current outpayments and associated call volume data for these ranges. Our expectation is that originating communications providers will make these price points available upon implementation of the unbundled tariff in order to comply with their regulatory obligations, although it remains open to them to set alternative price points if the evidence available to them suggests that these will be a better reflection of the volume and range of demand for service charge price points from other providers. In response to stakeholders' responses, we have also set out in Annex 3 a process which we consider will facilitate the determination of new service charge price points which differ from current outpayments made on these ranges. While we expect industry to take the lead in developing a process of this nature, we will continue to work closely with stakeholders during the implementation phase to provide assistance and guidance where appropriate;

- **revisions to our approach to assessing 080 origination charges:** in order to assess the impact of a free-to-caller approach on the 080 range, we have reached assumptions about the likely wholesale origination charges that would arise in practice under this approach. We have revised these assumptions since April 2013 to take account of updated cost data and more recent time series data that has become available since then, and in light of stakeholder comments. Our revised assumptions are a fixed origination charge of 0.4 – 0.5ppm and a mobile origination charge of 1.5 – 2.4ppm; and

- **extension of the 080 and 116 access condition to business calls:** in the April 2013 policy position our proposed access condition was limited to 080 and 116 calls made by consumers, because the requirement for a maximum retail price of zero only applies to calls made by consumers (albeit we expect that communications providers are likely to voluntarily offer these calls free of charge to business callers as well). Several stakeholders raised concerns, however, that this approach could lead to uncertainties over appropriate origination payments for business calls to free-to-caller 080 and 116 numbers, as well as additional disputes, potentially resulting in call blocking and other connectivity issues. In light of these concerns, and in recognition of the risk of interconnection problems for voluntarily zero-rated business calls to 080 and 116 numbers, we have extended the access condition so that it applies to all 080 and 116 calls which have been charged at zero at the retail level (regardless of whether those calls are made by consumers or businesses).

The legal instruments and timing of the changes

1.29 We also received several stakeholder comments on our proposed legal instruments. Having considered these comments, we have made some modifications to the legal instruments on which we consulted. Our notification of the final legal instruments can be found at Annexes 8 to 12 of this statement. They are explained in more detail in Section 5.

1.30 Given the scope and significance of these changes, communications providers will need time to implement the changes as well as inform their customers. In addition, service providers using the numbers will need time to make any necessary changes to how their numbers are advertised. We therefore consider that a period of 18 months is required to implement the changes.

1.31 We are aware, however, that the timing of the publication of this statement means that the initial implementation timing would straddle the Christmas period. The access condition requires terminating communication providers to notify their proposed revisions to origination charges within one month of the date on which the condition enters into force – we were therefore concerned that they would struggle to meet that deadline, particularly where they have a large number of notifications to make. We have therefore decided to delay the entry into force of the access condition until two weeks after the date of publication of this statement. We consider that this will give terminating communications providers two additional weeks from the publication of this statement in which to prepare and dispatch their notifications, and will make up for any office closures, etc. over the Christmas period. In order to ensure consistency, we are also delaying the entry into force of our modifications to the other conditions (General Conditions and PRS Condition) by two weeks. This means that the free-to-caller and unbundled tariff regimes will be implemented on 26 June 2015, 18 months after the modifications to the General Conditions enter into force.

1.32 Our decision to make the 116 range free-to-caller will only require a change to the designation of the 116006 number in the Numbering Plan. The 116006 number has not yet been allocated to an SP or brought into use and therefore, unlike our changes to the 080 range, we consider that this change should be brought into effect immediately. As explained in April 2013, we want to avoid a situation where a service provider may be allocated this number and set it up on a Freephone basis, only for it to change to free-to-caller in June 2015. Our notification of the changes to the Numbering Plan in Annex 9 therefore includes an immediate modification of the designation of the 116006 number from 'Freephone' to 'Free-to-caller'.

Other number ranges within the NGCS review

1.33 There are still some outstanding non-geographic number ranges which we are considering within this structure, and which may require changes. In particular we are intending to consult in due course on options for the 070 and 076 ranges, and we are also currently reviewing the operation of the 055 and 056 number ranges to see if changes are required. We have now issued a further consultation on the 0500 range and aim to issue a final statement on the future of the range in 2014.[8]

Implementing the changes

1.34 These changes are significant and will affect all consumers of telecoms services and every business that uses these numbers. Successful implementation will therefore require careful and detailed planning by communications providers and service providers using the numbers. We recognise that we also have an important role to play in ensuring that all stakeholders understand the changes that are needed so that they can be planned for and delivered in good time.

1.35 We have set up an implementation team to oversee the changes. This includes the establishment of industry working groups covering all aspects of the implementation programme, bilateral discussions with relevant stakeholders, as well as starting to develop a core set of communications materials to explain the changes. This work will continue throughout the implementation period and we are committed to remaining closely involved with stakeholders to help facilitate the changes and ensure successful implementation in June 2015. Our implementation plan is discussed in more detail in Section 6.

1.36 As we explained in April 2013, we have also committed to a review of the changes some time after they have been implemented in order to ensure that they have been effective in addressing our concerns, and that communications providers are adhering to the requirements. We have set out more details of this review in Section 6.

[8] http://stakeholders.ofcom.org.uk/consultations/re-consultation-0500-freephone/

Section 2

Introduction

2.1 This statement sets out our decision to implement changes to the regulation of non-geographic numbers, specifically:

- to set a maximum retail price of zero for calls made by consumers to the 080 and 116 number ranges; and
- to introduce a new tariff structure (the 'unbundled tariff') for calls made by consumers to other non-geographic number ranges (specifically, the 084, 087, 09 and 118 ranges).

2.2 This is an outcome of the review of non-geographic numbers that we began in 2010[9], and follows the detailed proposals presented in our consultation published on 4 April 2012[10] and the policy position setting out the decisions we were minded to take published on 15 April 2013.[11]

2.3 In order to implement these changes we are making a number of modifications to the relevant General Conditions and the National Telephone Numbering Plan ('the Numbering Plan') as well as other relevant legal instruments. We consulted on proposed modifications to these legal instruments as part of the April 2013 policy position.

2.4 In this section we briefly summarise the background to this statement and set out the structure of the rest of the document.

Background

2.5 Non-geographic numbers are telephone numbers used to access services provided by businesses and Government agencies, information and entertainment services, payment services, as well as numbers called to vote on TV shows. Unlike geographic numbers (those starting with 01 or 02), non-geographic numbers are not associated with a particular place and can be used nationwide without varying the dialling code.

2.6 There are currently a variety of separate non-geographic number ranges in the Numbering Plan (see paragraph 2.8 of the April 2013 policy position for a list of all the different designations in the Numbering Plan). Our review of non-geographic call services ('NGCS') has covered all of the non-geographic number ranges in the Numbering Plan, with the exception of the 07 ranges which are used for mobile services. The decisions in this statement relate to the 116, 080, 084, 087, 09 and 118 number ranges only. As set out in paragraph 2.12 below, we are separately considering the other non-geographic number ranges not covered within this statement.

[9] We published a call for inputs in May 2010: http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geo-numbers/
[10] http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geographic-no/
[11] http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geo-no/

December 2010 consultation

2.7 We published our first consultation on the NGCS review in December 2010 ('the 2010 consultation'). This reviewed the use and regulation of NGCS and explained why we considered that the market was not working well for consumers. We consulted on options for wide-ranging changes to the regulation of non-geographic numbers to address the consumer problems we identified.

April 2012 consultation

2.8 In April 2012 we presented our revised, and more detailed, proposals for consultation. The consultation took into account the stakeholder responses we received to the 2010 consultation as well as substantial evidence gathering and industry discussions we undertook throughout 2011.

2.9 In that consultation our view on the consumer harm and failures in the NGCS market remained largely consistent with the view we presented in the 2010 consultation. In particular we said that consumer price awareness of non-geographic calls was poor and this was leading consumers to overestimate the cost of calls, making them generally suspicious of the numbers and reluctant to use them. We also identified other market failures including SPs' lack of control over retail prices and a lack of incentives on all parties to take account of the effect of their actions on the perception of non-geographic numbers as a whole. We therefore said that those interrelated market failures required a systematic reform across the whole set of non-geographic numbers.

2.10 We proposed the following specific changes:

- to make the 080 and 116 number ranges free-to-caller (from both mobile and fixed lines);
- a single 'unbundled tariff structure' applying to the 084, 087, 09 and 118 number ranges. This structure involves the separation of the retail price into an access charge ('AC') charged by the communications provider ('CP') originating the call, and a service charge ('SC') charged by the CP terminating the call and the company which operates the service on that number; and
- we also confirmed that the 03 range would be the only non-geographic number range linked to geographic call prices (e.g. 01 and 02), i.e. removing any potential for confusion surrounding the existing designations of 0845 and 0870.

2.11 We set out specific details of how these proposals would be implemented, including tariff principles relating to the unbundled tariff and a proposal that implementation should take place 18 months after the publication of our final statement. Following the closure of that consultation at the end of June 2012 we received nearly 50 responses from a range of different stakeholders.

April 2013 policy position and consultation

2.12 In April 2013 we published our policy position on the introduction of the unbundled tariff and changes to the 080 and 116 ranges. Following review of the stakeholder comments we had received, we said we were minded to implement the changes we had proposed in the April 2012 consultation because in our view these offered the most appropriate and proportionate means of addressing the consumer concerns we had identified.

2.13 We noted, however, that we had made some updates and revisions to our assessment as a result of some of the stakeholder comments made in response to our April 2012 consultation, as well as carrying out some further analysis of the impact of our proposals. Although none of the changes altered our view on the appropriate policy response, some of those revisions involved amendments to our analytical approach or new evidence. We therefore considered it appropriate to offer stakeholders an opportunity to comment on those revisions and we set out specific consultation questions to that effect.

2.14 As a result, we said our view on the introduction of the unbundled tariff and making the 080/116 number ranges free-to-caller was subject to final confirmation in light of those specific areas of further consultation.

2.15 The April 2013 policy position also set out our proposed modifications to a range of legal instruments that were necessary to implement our proposed changes to non-geographic numbers. In particular we proposed modifications to the existing General Conditions 12, 14, 17, 23 and 24, the Numbering Plan and the Premium Rate Services ('PRS') Condition. In addition, we proposed to set an access condition on CPs that terminate calls to 080 and 116 numbers, and to set a new condition applying to persons other than CPs in relation to their use of numbers in the 084, 087, 09 and 118 ranges. We requested stakeholder comments on these proposed modifications and new legal instruments.

2.16 Finally, we confirmed our view that implementation of the unbundled tariff and free-to-caller regimes should take place 18 months after the publication of our final statement. We said that we would continue to engage and support the industry to ensure that any ongoing implementation issues were resolved and that all stakeholders were fully aware of the changes.

2.17 We also set out our intention to carry out a review, after our proposed changes were implemented, in order to ensure that they were effective in addressing our concerns and that CPs are adhering to the requirements.

2.18 The consultation on the legal instruments and the specific areas in which we had revised our assessment closed on 28 May 2013.

Other number ranges being considered in this review

2.19 As noted above, the number ranges within the scope of the decisions in this statement are 080, 084, 087, 09, 116 and 118. There are, however, several other non-geographic number ranges which are within the scope of this NGCS review but which we have been considering separately. We have set these out below.

The 0500 number range

2.20 In October 2012 we consulted on a proposal to withdraw the 0500 range (which is currently designated as 'Freephone' in the Numbering Plan).[12] In the light of responses to that consultation we have now issued a further consultation setting out modifications to our proposed approach, in particular options for moderating the

[12] http://stakeholders.ofcom.org.uk/consultations/0500-number-range/?a=0

impact of any withdrawal.[13] We intend to issue a final statement in 2014 once we have considered responses to the latest consultation.

The 055/056 number ranges

2.21 The 055 'Corporate Numbers' range is for use by businesses, with the potential for allowing corporations to apply direct to Ofcom for their own numbers rather than acquiring them from CPs. Very few corporations use the range which as a result has very low volumes.

2.22 The 056 range is for Location Independent Electronic Communications Services. This range is sometimes used by providers of "Voice over Internet Protocol" ('VoIP') services. However, many VoIP operators prefer geographic numbers or other non-geographic ranges. The 056 range therefore has low volumes of use.

2.23 Given the wider changes to non-geographic numbers, and our strategic aim to simplify the non-geographic numbering system, we have been considering separately whether changes may be required to the regulation of the 055 and 056 number ranges. We have been gathering evidence on the use of the ranges and will continue to monitor their use to assess whether intervention is required.

The 070 / 076 number ranges

2.24 Following the responses to our December 2010 consultation on non-geographic numbers, we took the view that the issues relating to the non-standard 07 range (i.e. 07 numbers that are not used to provide mobile services[14]) were substantively different to those of other non-geographic numbers. In large part this is due to the confusion with standard 07 mobile numbers and the occurrence of fraud on the ranges. We believe that these issues require a different approach to the assessment and potential regulatory response than most other non-geographic numbers. We therefore are considering these ranges separately and propose to issue a separate consultation in due course.

Approach to this statement

Legal and analytical framework

2.25 We set out the legal framework governing our duties and powers in relation to telephone numbers and the current regulatory requirements in relation to non-geographic numbers and the provision of NGCS in detail in Section 3 (Part A) of the April 2013 policy position. We have not therefore repeated that here but it applies equally to the decisions set out in this statement.

2.26 In this statement we have, where appropriate, also adopted the same analytical framework we used in the April 2013 policy position (and previously in the April 2012 consultation). This was set out in Section 3 of the April 2013 policy position.

[13] http://stakeholders.ofcom.org.uk/consultations/re-consultation-0500-freephone/
[14] The ranges 071 to 075 and 077 to 079 are designated in the Numbering Plan for use by mobile services. The 070 and 076 ranges are non-standard in that they are not used for mobile services but are designated in the Numbering Plan for personal numbers and radiopaging services, respectively.

Impact assessment and equality impact assessment

2.27 This statement, in combination with the analysis and evidence presented in the April 2013 policy position, represents an impact assessment of our decisions to make changes to the regulation of non-geographic calls. In particular:

a) Sections 7 to 10 and Annexes 10 to 12 in the April 2013 policy position, in combination with Section 3 and Annexes 1 and 2 in this statement represent an impact assessment of our decision to impose the unbundled tariff on the 084, 087, 09 and 118 number ranges; and

b) Sections 11 to 15 and Annexes 10 to 12 (as well as Annexes 26 to 31) of the April 2013 policy position, in combination with Section 4 and Annexes 1, 2 and 5 of this statement represent an impact assessment of our decision to make the 080 and 116 number ranges free-to-caller.

2.28 Annex 12 of the April 2013 policy position set out our equality impact assessment ('EIA') in relation to the decisions we were minded to take. We provisionally concluded in that EIA that the unbundled tariff and making the 080 and 116 ranges free-to-caller would overall have a positive impact on the equality groups we are required to consider. In light of our decision in this statement to implement the changes we set out in the April 2013 policy position, we consider that our conclusions in that EIA remain valid.

Stakeholder comments in response to April 2013 policy position

2.29 We received 35 responses to our April 2013 policy position consultation. All of the non-confidential responses are available on our website.[15]

2.30 We have set out and responded to stakeholder comments on the issues on which we consulted in the relevant sections of this statement. A number of stakeholders also provided comments on other aspects of our policy position set out in April 2013. If we have previously responded to these (or substantively similar) comments in our previous consultations and set out our position on these issues, then we have not re-presented those comments in this statement or sought to repeat the arguments and evidence previously discussed. However, where stakeholders have raised new issues or concerns which we have not previously considered we have set these out, and responded to them, in the relevant sections and annexes below.

2.31 For example a number of individual respondents suggested that, instead of proceeding with the unbundled tariff and free-to-caller approaches, we could instead increase transparency requirements when using the 08 range or ban revenue sharing arrangements. In particular, there was a view that businesses should be required to publish a separate geographic number alongside any revenue sharing range numbers used. We recognise that many people have concerns about the use of non-geographic numbers, but we have conducted a very extensive review in which we have fully explored our concerns about the use of these numbers and the various regulatory options that might be used to address those concerns. For the reasons set out in April 2013 policy position, we consider that the unbundled tariff and making the 080/116 ranges free-to-caller are the appropriate means for addressing those concerns.

[15] http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geo-no/?showResponses=true

List of sources

2.32 In Annex 6 of the April 2013 policy position we set out a list of sources which we had relied on. We have not set out that list again in this document but note that in addition to the material set out in that Annex, this statement references or relies on the following[16]:

2.32.1 our statement on the review of the fixed narrowband services markets ('the NMR statement'), published on 26 September 2013[17];

2.32.2 our statement on prices in fixed term contracts and decision to issue guidance on GC9.6 ('the GC9.6 statement'), published on 23 October 2013[18];

2.32.3 our 2013 Communications Market Report ('2013 CMR'), published in August 2013[19]; and

2.32.4 responses to an information request under section 135 of the Communications Act 2003 (the 'Act') to BT and Vodafone of 13 August 2013 covering volumes of calls originated and terminated to various non-geographic number ranges and their associated price chargebands.

Structure of this statement

2.33 This statement is structured as follows:

- in Section 3, we summarise our decision to introduce the unbundled tariff for calls to the 084, 087, 09 and 118 ranges. We set out, and respond to, stakeholder comments on the unbundled tariff in Annexes 1 (costs), 2 (impact assessment), and 3 (the unbundled tariff);

- in Section 4, we summarise our decision to set a maximum retail price of zero for calls to the 080 and 116 ranges. We set out, and respond to, stakeholder comments on the free-to-caller regime in Annexes 1 (Costs), Annex 2 (impact assessment), 5 (framework for assessing 080 and 116 origination charges) and Annex 6 (access condition);

- in Section 5 we summarise the changes that we have made to the draft legal instruments on which we consulted in April 2013, as well as how we consider they meet the necessary legal tests. We set out, and respond to, stakeholder comments in relation to our legal powers to implement these regulatory changes and the draft legal instruments on which we consulted in Annex 7;

- in Section 6 we set out the timetable and plan for implementing the changes we have decided to make to the regulation of non-geographic calls;

- Annex 4 contains our guidance on the setting of SC price points; and

[16] As noted in Annex 6 of the April 2013 policy position, this list, including the additional sources set out here, is for convenience only and is not intended to be exhaustive.
[17] http://stakeholders.ofcom.org.uk/binaries/consultations/nmr-2013/statement/Final_Statement.pdf
[18] http://stakeholders.ofcom.org.uk/binaries/consultations/gc9/statement/statement.pdf
[19] http://stakeholders.ofcom.org.uk/market-data-research/market-data/communications-market-reports/cmr13/uk/

- Annexes 8 to 12 contain final notifications of the modifications we are making to existing legal instruments and the new conditions we are setting in order to implement the changes to non-geographic calls.

Section 3

The unbundled tariff

Introduction

3.1 In this section we set out our decision to adopt the unbundled tariff for the 084, 087, 09 and 118 number ranges. We provisionally made this decision in the April 2013 policy position, however, this was dependent on the issues on which we were further consulting in relation to the unbundled tariff, which were:

- our approach to assessing the billing cost estimates for implementing the unbundled tariff; and
- our modelling of the benefits of the unbundled tariff on the 09 range.

3.2 We received a number of stakeholder comments on these two issues, as well as some other issues related to our cost benefit analysis. Annexes 1 and 2 set out these comments in detail, as well as our response. We also received stakeholder comments on a number of other issues on which we did not consult directly. These comments are set out in Annex 3. Some of these comments have led us to reassess our position on specific issues or to provide more detailed guidance, in particular:

- the inclusion of the AC within call bundles; and
- the process for establishing SC price points.

3.3 We carried out a detailed assessment of the unbundled tariff in the April 2013 policy position and have not reproduced all of that analysis below. We have instead summarised our assessment and included cross-references to where further analysis and evidence can be found in the April 2013 policy position, and updated this where relevant. This section should therefore be read in conjunction with our earlier analysis.

3.4 Below therefore we set out our decision on the issues on which we consulted, as well as these two additional issues set out in the paragraph above. We then confirm our overall decision to implement the unbundled tariff. First, however, we have summarised the provisional decision set out in the April 2013 policy position with respect to the unbundled tariff.

Summary of assessment and provisional decisions in the April 2013 position

3.5 In this sub-section we describe the consumer harm we have identified on the 084, 087, 09 and 118 ranges, our assessment of the unbundled tariff as an option for addressing that consumer harm in the April 2013 policy position and our specific assessment of options for the 0845 and 0870 number ranges. We then summarise our approach to quantifying the impact of the unbundled tariff in the April 2013 policy position. Finally we set out the provisional decisions we made in April 2013 with respect to the design of the unbundled tariff, in particular the structure of the AC and SC elements, as well as the transparency requirements and exclusion of certain call types from the unbundled tariff requirements.

Consumer harm and policy objective

3.6 Section 4 of the April 2013 policy position set out our view on the consumer harm and market failures on the 084, 087, 09 and 118 number ranges. In particular we identified the following market failures:

- **lack of consumer price awareness**: we said there was a widespread lack of consumer price awareness leading to overestimation of the price of calls to certain number ranges (in particular the 084 and 087 ranges) as well as general consumer confusion about prices across the number ranges;

- **the vertical externality**: we said SPs did not have sufficient control of the price paid by callers, leading to retail prices that do not necessarily reflect the preferences of SPs; and

- **the horizontal externality**: we said originating CPs ('OCPs') and SPs do not take into account the effect their behaviour has on consumers' perceptions of calls made to these numbers from other OCPs and on calls to adjacent number ranges. In other words, consumer perceptions of the price for calling an 084/087 number from a fixed line will be affected by the perceptions of the price of calling the same number range from a mobile (and vice versa) and will also impact on their perceptions of call prices for other numbers in the range and other ranges. In such circumstances consumers are likely to base their decisions on inaccurate pricing information, and there are insufficient incentives on OCPs to price competitively.

3.7 We said these market failures led to a number of outcomes which harm the interests of consumers:

- as a result of uncertainty about price, consumers limit the number or duration of calls they make on these ranges in circumstances where they would benefit from making more and/or longer calls;

- the relative prices of calls to these number ranges do not reflect consumer preferences;

- SPs on these ranges lack an incentive to invest in service availability and innovation; and

- consumers may be unable to access or be deterred from accessing socially important services on the 084 range (especially 0845), a particular concern in the case of vulnerable consumers.

3.8 We therefore concluded that there was significant evidence of consumer detriment in relation to the 084, 087, 09 and 118 number ranges which warranted our intervention.[20] Our policy objective is therefore to address these market failures by protecting consumers from the harm we have identified, where to do so falls within our powers and fulfils our duties.

[20] Section 4 and Annex 8 of the April 2013 policy position set out the evidence supporting our conclusions in this respect.

Assessment of the unbundled tariff option

3.9 We initially consulted in December 2010[21] on options to address the market failures with respect to the revenue sharing ranges. The options included setting fixed maximum retail prices and splitting retail charges to reflect the distinct services being provided when making a call – the "unbundled tariff" concept. In the April 2012 consultation[22] we proposed the unbundled tariff as our preferred approach and set out the proposal in more detail. After considering responses to that consultation and conducting further analysis and engagement with industry, we provisionally concluded in the April 2013 policy position that the unbundled tariff was the appropriate regulatory measure for calls to the 084, 087, 09 and 118 number ranges.

3.10 The unbundled tariff involves restructuring charges to recognise separate payments to be made to the OCP, and to the TCP (potentially to be shared with the SP). The charges for the calls are separated into two components:

- **the AC**: to cover the cost and profit of the OCP; and
- **the SC:** paid to TCPs to cover, or contribute towards their costs, as well as any revenue-sharing arrangements with SPs.

3.11 As noted above we considered alternative options to the unbundled tariff as part of the December 2010 and April 2012 consultations.[23] In the April 2012 consultation, we compared the unbundled tariff approach against setting maximum retail prices for calls to each number range. Whilst we recognised that the maximum prices option would offer an improvement on the status quo, we considered it would come with a number of significant drawbacks. In particular, we said it would be a relatively interventionist approach which increased the risk of regulatory failure, relative to other approaches that achieve the same objective. We also considered that the regulatory burden associated with this approach would also be substantial, as it would not address the issues at the wholesale level, which would be likely to lead to ongoing disputes and significant costs and uncertainty for stakeholders. We therefore decided to reject the maximum prices option.[24]

3.12 In contrast we considered that there was sufficient evidence to find that the unbundled tariff was a justifiable and proportionate approach for protecting consumers against the harm we have identified. In Section 8 of the April 2013 policy position we set out our analysis of the unbundled tariff against each of our assessment criteria, which are:

- consumer price awareness;
- efficient prices;

[21] http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geo-numbers/, see in particular Section 6 and Annex 5.
[22] http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geographic-no/, in particular Part B, Section 9.
[23] In particular, we considered information remedies, wholesale only remedies and maximum retail prices (discussed further in the next paragraph). We rejected the information remedies and wholesale only approach in the April 2012 consultation (see Part B, Section 9, paragraphs 9.28 to 9.40 and Annex 17).
[24] See paragraphs A19.12 to A19.21 in Part B, Annex 19 of the April 2013 policy position.

- service quality, variety and innovation;
- access to socially important services; and
- regulatory burden.

3.13 We have summarised that assessment below.

Consumer price awareness

3.14 We said the unbundled tariff was likely to significantly improve consumer awareness of non-geographic call prices, both at the point of call and at the point of subscription. In particular because the pricing message to consumers would be simpler and the consistent pricing message provided to consumers would be likely to reduce the current overestimation of prices, particularly for the 084/087 number ranges, as well as reducing general confusion about prices.

3.15 Our provisional conclusion, therefore, was that the unbundled tariff was likely to improve consumer price awareness compared to the status quo and would act to protect consumers from the harm currently arising from poor price awareness of non-geographic calls among consumers.[25]

Efficient prices

3.16 We said that the unbundled tariff would lead to more efficient prices, i.e. prices which better reflect consumer preferences. In particular we said it would:

- increase competitive pressure on the AC, because the simplicity of the AC structure will enable consumers who are sensitive to the price of NGCs to directly compare prices in a way which they currently are unable to do;
- increase competitive pressure on the SC (albeit we recognised the extent for competition on the SC might be limited for some of the lower rated number ranges); and
- reduce the effect of the horizontal and vertical externalities.

3.17 As a result of these effects, we said we expected NGC prices were more likely to reflect callers' and SPs' preferences under the unbundled tariff than under the status quo.[26]

Service quality, variety and innovation

3.18 We said the improvements in price awareness resulting from the unbundled tariff were likely to improve demand for services (bringing back into the fold consumers who simply avoid calling NGCs whenever they can, for example), which in turn should improve service quality, variety and innovation. We highlighted evidence that suggested that if consumers were more confident about prices, and less likely to overestimate them, they were more likely to make calls that they otherwise would not

[25] See paragraphs 8.18 to 8.21 in Section 8 and also our response to stakeholder comments in paragraphs A19.54 to A19.80 in Annex 19, Part B of the April 2013 policy position.
[26] See paragraphs 8.22 to 8.24 in Section 8 and also our response to stakeholder comments in paragraphs A19.81 to A19.105 in Annex 19, Part B of the April 2013 policy position.

have made. We said that increase in demand was likely to benefit service innovation, variety and availability because it will be more attractive and viable for SPs to offer services on these number ranges.

3.19 In addition, we said we expected the unbundled tariff to address the vertical externality, because SPs would have greater control over the SC element of non-geographic calls and would be able to advertise this price clearly to its customers. We said that this, as well as the likely increase in demand would allow SPs to innovate and develop new services, where previously they might not have done so.[27]

Access to socially important services

3.20 We noted this criterion was primarily relevant to the 084 number ranges. We said the unbundled tariff would improve vulnerable consumers' access to socially important services provided on the 084 range by making them more aware of the price of these calls (and thereby reducing the price overestimation that currently deters those callers). In addition, by making the pricing division between the OCP and SP clear, this could prompt some SPs (as a result of concerns about adverse publicity) to select a price point or number range appropriate to the nature of their service.[28]

Regulatory burden

3.21 We recognised that implementing the unbundled tariff would impose significant costs (our estimates of those costs are summarised in Table 3.1 below). However, our analysis indicated that the benefits to residential consumers of the reduction in price overestimation on 084/087 alone were likely to substantially exceed the resource costs of the unbundled tariff. We considered that the unbundled tariff was likely both to reduce the extent to which consumers overestimate prices and lead to a shift in demand, and that taking any shift in demand into account (as well as the additional benefits we did not model) would reinforce our conclusion that the benefits of the unbundled tariff would exceed the costs.

3.22 We also noted that the unbundled tariff would, by providing more certainty and clarity to the industry, reduce the regulatory burden and the risk of future regulatory or competitive disputes on CPs compared to the status quo.[29]

Summary of assessment of the 0845/0870 ranges

3.23 In our previous April 2012 consultation, given the issues connected with the 0845 and 0870 number ranges (in particular that they had been previously linked to geographic call prices), we consulted on a different set of options for these ranges. As well as the unbundled tariff approach, we also consulted on an option to reaffirm the link between the 0845 and 0870 ranges and geographic call prices.

3.24 In the April 2013 policy position, having considered stakeholder responses, we provisionally concluded that applying the unbundled tariff to the 0845 and 0870

[27] See paragraphs 8.25 to 8.30 in Section 8 and also our response to stakeholder comments in paragraphs A19.106 to A19.116 in Annex 19, Part B of the April 2013 policy position.
[28] See paragraphs 8.31 to 8.33 in Section 8 and also our response to stakeholder comments in paragraphs A19.117 to A19.130 in Annex 19, Part B of the April 2013 policy position.
[29] See paragraphs 8.34 to 8.37 in Section 8 and also our response to stakeholder comments in paragraphs A19.131 to A19.144 in Annex 19, Part B of the April 2013 policy position.

number ranges was the best option for consumers and SPs, and for advancing the policy options of our review of non-geographic calls.

3.25 We set out an evaluation of applying the unbundled tariff to the 0845 and 0870 number ranges against each of our assessment criteria in Section 8 of the April 2013 policy position.[30] In summary we considered that continuing to treat these number ranges differently to other, very similar looking, non-geographic number ranges created a significant risk of enduring consumer confusion between the price and treatment of 0845 and 0870 on the one hand, and other 084 and 087 numbers on the other. We said that had, and would continue to, undermine consumer confidence and understanding in both these number ranges and other unbundled tariff number ranges.

3.26 We recognised that including these ranges within the unbundled tariff came with higher transition costs for industry, and potentially greater migration costs for some SPs – which could negatively affect service availability on the range (but not necessarily across all ranges as SPs would presumably migrate to another range). However, given the size of the 0845 and 0870 number ranges, we said it was likely that the ongoing benefits of reduced consumer confusion and improved price awareness under a single approach to all 084/087 number ranges were significant and would outweigh the additional one-time migration/misdialling costs and the limited impact on service availability.

3.27 Therefore, we provisionally concluded that the unbundled tariff should apply to the 0845 and 0870 ranges. We noted this represented a departure from our historic policy preference for these number ranges, because any link to geographic call pricing would be removed. However, we considered that that approach was justified in light of our assessment.

Quantified impact assessment

<u>Cost estimates</u>

3.28 Annex 10 of the April 2013 policy position set out our analysis of the costs of implementing the unbundled tariff.[31] The estimates we used for each cost area for the unbundled tariff are summarised in the Table below.

[30] See paragraphs 8.46 to 8.65 of the April 2013 policy position.

[31] In particular see paragraphs A10.4 to A10.47 for our assessment of billing costs, paragraphs A10.66 to A10.124 for our assessment of migration costs, A10.153 to A10.180 for our assessment of misdialling and consumer time costs, A10.203 to A10.252 for our assessment of communications costs and finally paragraphs A10.282 to A10.285 for our summary of all those costs.

Table 3.1: Estimated costs of implementing the unbundled tariff

	One-off costs	Annual costs
Billing costs	£11.2m to £35.1m	£1.4m to £7.4m
Communication costs	£2.4m to £5.9m	None
Migration/misdialling/consumer time costs	£11.1m to £30.3m	None
Total costs	**£24.7m to £71.4m**	**£1.4m to £7.4m**

3.29 We explained in the April 2013 policy position that our estimates had wide ranges to reflect the uncertainties and potential for different stakeholders to experience different levels of cost. We nevertheless considered that they represented a reasonable approximation of the likely costs involved with implementing the unbundled tariff.[32]

Quantified benefits assessment

3.30 In order to place the quantified costs in the Table above into context, in the April 2013 policy position we carried out a quantified assessment of some of the benefits we expected the unbundled tariff to create. We developed and extended our approach to this quantification in the April 2013 policy position – in particular we took a different approach to assessing the benefits of the 09 range compared to the 084/087 range.

3.31 Annex 11 of the April 2013 policy position set out our approach to quantification of the benefits in detail. We have summarised our assessment separately for the 084/087 and the 09/118 number ranges below.

The 084/087 number ranges

3.32 First, given that callers currently overestimate the price of 084/087 calls, we calculated how much the gap between expected prices and actual prices would need to narrow in order for the benefits to callers to outweigh the costs. Our assessment indicated that eliminating between 1.4% to 10.6% of that gap would suggest that the benefits to residential consumers outweighed the costs. We considered it was likely that the unbundled tariff would improve price expectations by considerably more than this amount.

3.33 Second, we also considered that the unbundled tariff would prompt a general increase in demand for NGCs (separate from the impact on price overestimation) for example because fewer consumers are deterred from making NGCs by price uncertainty and/or because the quality and variety of services available by non-geographic numbers improve (for example see our assessment under the service quality, variety and innovation criterion above). We therefore calculated by how much call volumes would have to increase for the benefits to outweigh the costs. Our assessment indicated that an increase in demand of 0.1% to 0.6% would

[32] See paragraph 8.67 in Part B of the April 2013 policy position.

suggest that the benefits to consumers outweighed the costs. We considered it plausible that, given the improvements to consumer confidence and price awareness that we expected, the unbundled tariff would increase demand by more than this amount.

3.34 In practice, we considered that the unbundled tariff was likely to both reduce the extent to which consumers overestimated prices and lead to a shift in demand.[33]

The 09/118 number ranges

3.35 We took a different approach to quantifying the benefits of unbundling the 09 number range, because the evidence from our consumer surveys about how consumers perceive the price of 09 calls was somewhat mixed. Given this, we assessed the impact of implementing the unbundled tariff under three scenarios.

3.36 Under each scenario, we first considered what the incremental costs of implementing the unbundled tariff on the 09 range would be, assuming the measure is already implemented on the 084/087 number ranges. We identified that there might be incremental billing costs, costs to SPs of migrating to a different number range, and communications costs for OCPs and TCPs. Having considered each of these costs in turn, our view was that the incremental costs were likely to be low, particularly given that most of the costs would already be incurred through implementing the unbundled tariff on the other number ranges.

3.37 Our assessment is summarised below. In particular we considered three scenarios:

- consumers overestimate 09 prices – in this case, we considered that unbundling the 09 tariff was justified because we qualitatively considered that the associated positive consumer benefits (reduced price overestimation and increase in demand for NGCs) were likely to outweigh the relatively low costs of the implementing the unbundled tariff;

- consumer expectations of 09 prices are broadly accurate – in this case, we acknowledged that the motivation for implementing the unbundled tariff was less obvious because there appeared to be less consumer harm. However, we considered it was likely that there were still a number of potential benefits of implementing the unbundled tariff on 09 (for example it enables 09 SPs to present a clearer price point, which reduces the effect of the vertical externality and consumer confusion over the pricing of these number ranges) and those benefits were likely to outweigh the relatively low incremental implementation costs; and

- consumers underestimate 09 prices – in this case, we attempted to model the impact of implementing the unbundled tariff on the assumption that it will reduce consumer price underestimation and therefore lead to less demand for NGCs. We said this would lead to benefits to consumers through a reduction in over-consumption but would also lead to costs to various producers that would flow back to consumers via different mechanisms. Although we were not able to quantify fully the effect of reduced demand, we considered that the overall impact of the unbundled tariff was still more likely than not to be positive. This was because the costs to consumers from reduced SP revenues would need to be

[33] We summarised our approach in paragraphs 8.69 to 8.81 of Section 8 (Part B) and we set out our assessment in more detail in paragraphs A11.5 to A11.66 (Part A).

significant to outweigh the net benefits from the other effects we were able to quantify, and we considered this unlikely. We noted that, in general, we expected consumers would be better off as a consequence of making better-informed decisions.

3.38 Overall, we placed more weight on the findings under our second scenario (i.e. 09 callers are relatively price aware). We said the fact that 09 SPs must already publish 09 prices, together with the fact that callers are more likely to be sensitive to 09 prices, suggested that the majority of those that currently call 09 numbers were likely to have price information available to them at the point of call. Therefore, we considered that the impact of unbundling the 09 range was likely to be positive overall for consumers. In any event, we placed significant weight on the benefits of applying the unbundled tariff consistently across both 084/087 and 09 number ranges, because we considered that applying separate remedies to different number ranges (on top of our separate treatment of 080 numbers) was likely to be less effective in addressing the problems of price complexity and lack of consumer price awareness experienced today, as well as the other consumer harm problems we had identified.[34]

3.39 We did not model the benefits for the 118 range because we did not have the necessary data[35] but these were set out qualitatively as part of our assessment using our criteria. On the basis of that assessment we considered that the benefits of the unbundled tariff were likely to outweigh the costs.

Overall impact assessment

3.40 Overall we concluded, subject to the issues on which we were consulting, that the costs of implementing the unbundled tariff were likely to be outweighed by the benefits.

3.41 We also noted that our quantified assessment (summarised above) did not capture all of the benefits of the unbundled tariff. For example we highlighted that:

- we had not modelled the effects of improved competition between OCPs and SPs, such as a more efficient structure of prices; [36]

- we had only modelled the benefits for consumers – we had not modelled the benefits of higher call volumes for OCPs, TCPs or SPs. We considered that increased call volumes (as a result of improved price awareness etc) were also likely to benefit all these parties as a result of originating and receiving more calls.

3.42 Overall, taking into account the impact on stakeholders more widely, we considered that there were additional positive effects that were not incorporated in the above

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[34] See paragraphs A11.67 to A11.160 in Annex 11 (Part A), as well as the summary in paragraphs 8.82 to 8.84 in Section 8, (Part B) of the April 2013 policy position.

[35] For example, we do not have access to data indicating consumers' expectations of the price of 118 calls because questions regarding the 118 number range were not included in the 2009 Consumer survey.

[36] We recognised that increased competition was likely, on average, to have a negative impact on suppliers' profits, but our view was that it is generally likely to be outweighed by the wider benefits, such as lower prices for customers and higher-quality services.

modelling. Taking these additional effects into account reinforced our view that the benefits of the unbundled tariff are likely to outweigh the resource costs.[37]

Design of the unbundled tariff

Tariff principles applying to the AC and SC

3.43 In Section 9 of the April 2013 policy position, following consideration of stakeholder comments we set out our provisional decision in relation to the specific tariff principles setting out the structure of the AC and SC, as well as the division between the two (the 'assumed handover point' or 'AHP'). We have summarised our provisional decisions below, first in relation to the AC, then the SC and finally the AHP.

3.44 In relation to the AC, we provisionally concluded that;[38]

- OCPs would be able to offer ACs that vary by tariff package;
- the AC would apply to all consumer calls to the 084, 087, 09 and 118 number ranges. The OCP would be permitted to include the AC for calls within a bundle of inclusive minutes, so long as that it did so in relation to calls to all of the 084, 087, 09 and 118 ranges;
- the AC would be charged at a pence per minute ('ppm') rate only but OCPs would be permitted to round up the call duration to the first minute;
- the AC would not be permitted to vary by time of day/day of the week; and
- there would be no maximum price cap on the AC but we committed to monitoring consumer understanding of the AC following implementation of the unbundled tariff and said we would review our position after implementation.

3.45 In relation to the SC, we provisionally concluded that:[39]

- bespoke SCs would be prohibited (i.e. the SC for a given number could not vary by OCP);
- the SC would not be permitted to vary by time of day/day of the week but there would not be other restrictions on the pricing structure;
- in calculating the SC element of the retail price for a call, the CP must round up the length of the call to the next nearest second if the SC comprises or includes a pence per minute rate[40]; and
- there would be a VAT exclusive SC maximum of:

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[37] See paragraphs 8.86 to 8.91 in Part B of the April 2013 policy position (in addition in Annex 20 we responded to stakeholder comments on the structure of the AC).
[38] See paragraphs 9.4 to 9.56 in Section 9, and Annex 20, in Part B of the April 2013 policy position.
[39] See paragraphs 9.57 to 9.133 in Section 9, and also Annex 21, in Part B of the April 2013 policy position.
[40] See paragraphs 10.49 to 10.52 in Section 10, and also Annex 25, in Part B of the April 2013 policy position.

- o 5.833 pence for the 084 range, applying to whichever charging structure is selected;
- o 10.833 pence for the 087 range, applying to whichever charging structure is selected; and
- o £5 per call (fixed fee) and £3 per minute for the 09 range.[41]

- OCPs would be required to accommodate a minimum of 100 SC price points within their billing systems, with 80 being made available on implementation and a further 20 twelve months later;
- SC price points would be required to be in increments of a minimum of 1p; and
- OCPs would be required to make available SC price points which reflected, on a fair and reasonable basis, the price points proposed by other providers, taking into account the volume and range of those proposals.

3.46 We also provisionally decided that the ‘assumed handover point’, i.e. the dividing line between the AC and SC elements of the call, should be the digital local exchange (‘DLE’) for BT originated calls. For calls originating on other networks we said it would be the originating switch or the closest point of interconnection to the origination of the call. This represented a near-end handover model (‘NEHO’). In addition we decided that, as part of that model, the TCP would be responsible for any transit payments, which meant any additional transit cost would need to be absorbed in the SC element of the call, rather than the AC.[42]

Price publication requirements

3.47 We emphasised in the April 2013 policy position that the effectiveness of the unbundled tariff would rely on consumer understanding of the new charging structure. Therefore we considered it was important that clear information was made available to consumers about NGC charges as it would help develop consumers’ confidence in making calls and promote competition on charges.

3.48 We therefore provisionally concluded that a number of price publication requirements were necessary to ensure that charges were clearly communicated to consumers. These were:

- OCPs would be required to, at a minimum, state the pence per minute rate of the consumer’s AC in his/her bills;
- OCPs would be required to publish their ACs in all their pricing information, advertising and promotional material (which refers to call pricing) and also when a consumer was signing up to a new contract; and

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[41] We separately discussed the SC price caps for the 09 range in Annex 21 (Part B) of the April 2013 policy position.
[42] See paragraphs 9.134 to 9.140 in Section 9, and also Annex 23, in Part B of the April 2013 policy position.

- SPs would be required to publish their SCs wherever they advertised their non-geographic number. The Advertising Standards Authority and PhonepayPlus would be responsible for ensuring compliance with this requirement.[43]

Call types exempted from the unbundled tariff

3.49 Finally we set we were minded to exclude certain call types from the tariff principles and other requirements we were imposing. In particular these were:

- **calls originating outside of the UK**: we recognised that internationally originated call volumes to non-geographic numbers had very low call volumes and that there could be additional costs from including them within the scope of the unbundled tariff requirements. We considered it proportionate to exclude these calls from the unbundled tariff;

- **business callers**: we noted the evidence we had set out in relation to the market failures and harm was focussed on residential and domestic consumers and our power to impose tariff principles could only be exercised if it was for the purpose of protecting consumers. We therefore confined the requirements of the unbundled tariff to calls made by consumers and excluded business callers; and

- **calls made from payphones:** we noted there could be significant costs in making changes to the tariff structures of payphones and, on balance, we considered it would not be proportionate to require the implementation of the unbundled tariff on calls from payphones.[44]

Timetable for implementation

3.50 We recognised in the April 2013 policy position that the scale of changes required to implement the unbundled tariff were significant and we emphasised that we did not underestimate the amount of work that would be involved. Whilst we recognised that there was some urgency to implementation because of the consumer harm currently present in the market, we noted we needed to balance that against making sure that there was sufficient time for implementation to be carried out properly to create a new structure that would effectively protect consumers from the harm we had identified. In light of those issues, we decided that an implementation period of 18 months from the publication of our final statement was a justifiable approach.[45]

Stakeholder responses on the April 2013 consultation issues

3.51 As noted above, there were two specific areas on which we further consulted in the April 2013 policy position in relation to our assessment of the impact of the unbundled tariff. These were:

- our approach to assessing the billing cost estimates for implementing the unbundled tariff; and

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[43] See paragraphs 10.5 to 10.30 in Section 10, and also Annex 25, in Part B of the April 2013 policy position.

[44] See paragraphs 10.53 and 10.66 in Section 10, and also paragraphs A25.77 to A25.124 Annex 25, in Part B of the April 2013 policy position

[45] See paragraphs 10.68 to 10.74 and paragraphs A25.125 to A25.138 in Annex 25 (Part B) of the April 2013 policy position.

- our modelling of the benefits of the unbundled tariff on the 09 range.

3.52 We address each in turn below.

Billing costs

3.53 In the April 2013 policy position we included a consultation question about our approach to estimating the billing costs of the unbundled tariff. This was because we made some amendments to the methodology we used to estimate costs for different types of stakeholder and billing systems following stakeholder comments, and additional information gathered from stakeholders following the previous April 2012 consultation.[46]

3.54 We received comments from some stakeholders on this point. These comments, and our response, are set out in Annex 1. Having considered their comments we have decided not to make any alterations to our estimates. Our final estimates of billing costs therefore remain unchanged from those we set out in the April 2013 policy position. In Annex 1 we have made some slight updates to some of our other cost estimates (in particular misdialling and consumer time costs) to reflect the change in implementation date to mid-2015, as well as the availability of more up to date information. Our other cost estimates (including migration costs, communication costs and other costs) also remain unchanged from those which we set out in the April 2013 policy position.[47] As previously noted, we recognise that there are some areas in which it has been difficult for us to quantify costs and that in some areas we have tended to overstate the likely costs.[48]

09 benefits assessment

3.55 We set out a new approach to quantifying the benefits of implementing the unbundled tariff on the 09 range in the April 2013 policy position and we therefore consulted further with stakeholders on this issue. In particular we recognised that, unlike the 084 and 087 ranges, it was not clear from our consumer survey evidence how consumers perceived the price of 09 calls. Given that uncertainty we conducted a separate assessment to quantify the benefits on the 09 range. Under that new assessment we provisionally concluded that the impact of unbundling the 09 range was likely to be positive overall.[49]

3.56 Whilst several stakeholders supported our assessment, EE set out a number of detailed challenges. We have set out these comments, and our response, in Annex 2. We have also responded there to EE's comments on the cost benefit analysis for unbundling the 118 range.

3.57 Having considered these comments in detail we do not consider they change our overall assessment and we remain of the view that the impact of unbundling the 09 range is likely to be positive overall. In relation to 118, we assessed the benefits for this range of implementing the unbundled tariff qualitatively against our assessment criteria in the April 2013 policy position. As explained in Annex 2, we consider there is evidence of consumer harm on the 118 range, while the incremental costs of

[46] See Annex 10, Part A of the April 2013 policy position, paragraphs A10.4 to A10.47.
[47] See Table A1.2 in Annex 1 where we have set out those cost estimates.
[48] See paragraphs A10.283-A10.285 in Part A, Annex 10 of the April 2013 policy position for further explanation.
[49] See Annex 11, Part A of the April 2013 policy position, paragraphs A11.67 to A11.135.

implementing the unbundled tariff on the range to address this are likely to be low. We therefore remain satisfied that the impact of the measure on the 118 range is likely to be beneficial. We also continue to place significant weight on the benefits of applying the unbundled tariff consistently across the 084/087, the 09 and the 118 range. This is because we consider that applying separate remedies to different number ranges is likely to be less effective in addressing the problems of price complexity and lack of consumer price awareness experienced in the NGC market today.

Other changes and refinements to our April 2013 policy position

Treatment of the access charge within bundles

3.58 In the April 2013 policy position we provisionally concluded that we should allow CPs the option of including their ACs within the price of call bundles, provided that applied to all unbundled tariff number ranges.[50] We proposed a modification to GC17 at paragraphs 17.25 and 17.29 to reflect this requirement. In response to our consultation on that proposed requirement, a number of stakeholders raised concerns about the effects of requiring CPs to treat calls to all unbundled tariff numbers in the same way when deciding whether or not to incorporate the AC element of the call price within a bundle.

3.59 A number of OCPs, including EE, TalkTalk, Sky and BT, said our approach was likely to lead to unbundled tariff numbers not being included in any call bundles and argued that this would be to the detriment of consumers who currently had certain 084/087 numbers included within their call bundles. We have set out these comments in detail, and our response in Annex 3.

3.60 Having considered stakeholder comments we have now reassessed our position. In summary, we consider that dis-incentivising CPs from including calls to unbundled tariff numbers within inclusive call bundles would adversely affect consumer confidence in these numbers. Given the weight of responses from CPs on this issue, we consider that there is a very real and significant risk of this consumer detriment materialising if we were to implement a requirement that CPs treat all unbundled tariff numbers the same when deciding whether or not the AC element of the retail price is included within a bundle.

3.61 We have therefore decided that the inclusion of the AC in a bundle shall be permitted to vary by number range, provided that outside of the bundle the AC is charged at the same rate for all number ranges (in line with our requirements for a single AC per tariff package). We have amended the wording in GC17.29 to reflect this position.

3.62 Notwithstanding the above, in line with our position on capping the level of the AC[51], if evidence were to emerge of consumer confusion or uncertainty about the inclusion of the AC in call bundles, or of OCPs using this to circumvent the restrictions for a single AC per tariff package, then we will reconsider whether it is necessary to introduce a requirement that the inclusion should not vary by number range.

[50] See Section 9 of the April 2013 policy position, paragraphs 9.40 to 9.46.
[51] See paragraph 9.53 in Section 9, Part B of the April 2013 policy position.

Guidance on SC price points

3.63 Under the unbundled tariff, we will be requiring OCPs to accommodate a minimum of 100 SC price point within their billing systems, with 80 being made available upon implementation in June 2015 and a further 20 twelve months later (i.e. by June 2016). The existing large range (more than 300) of different wholesale chargebands for the 084, 087, 09 and 118 number ranges will therefore need to be consolidated into a much smaller range of service charge price points. We consider the 100 minimum requirement is the appropriate trade-off between the need to encourage SP competition through pricing flexibility and the billing costs for OCPs in having systems able to charge a range of different SCs (the greater the number of price points the more complex and costly the implementation on their systems).

3.64 As set out in Annex 7, under GC17.32, OCPs will be required to set those SC price points which reflect, on a fair and reasonable basis, the SC rates proposed by other providers, taking into account the volume and range of such requests. In the April 2013 policy position we said that in terms of identifying the specific SC price points which would be used, industry should take the lead on that process. However, in light of some concerns from stakeholders about a lack of clarity about the process, we set out in broad terms, how the process for establishing SC price points could work.[52]

3.65 In response to the April 2013 policy position, a number of stakeholders, in particular Vodafone, EE and TNUK, continued to raise a number of concerns about what they considered was a lack of clarity about the process, and the potential for uncertainty that it would generate. We have set out these comments, and our response, in more detail in Annex 3.

3.66 In summary, we recognise that there is a significant level of concern from stakeholders about the workability of the approach we have set out. We have therefore sought to address these concerns through providing guidance which sets out an initial set of SC price points derived from existing call volumes on these number ranges. Accordingly, in Annex 3, we set out the 67 price points which we consider it would be fair and reasonable for an OCP to provide on implementation of the unbundled tariff, based on:

- our analysis of call volume data by reference to the chargebands (i.e. wholesale termination rates) in use for a 12 month period between 2012 and 2013 for calls to the 084, 087, 09 and 118 number ranges; and

- the methodological approach set out in Annex 3 for rationalising existing prices.

3.67 We consider such guidance will address the concerns of stakeholders about the burdensome nature of the SC negotiation process and, by improving certainty about the SC price points likely to be available, contribute to the effective implementation of the unbundled tariff in 18 months' time.

3.68 Our expectation is that OCPs will make the 67 SC price points set out in Annex 3 available within their billing systems in order to comply with their obligations under GC17.31 and GC17.32. Nonetheless, it remains open to them to set alternative price

[52] See paragraphs 9.119 to 9.130 in Part B of the April 2013 policy position. See also paragraphs A21.133 to A21.177 in Annex 21 of the April 2013 policy position where we set out our response to stakeholder comments on the approach to establishing SC price points.

points if the evidence available to them demonstrates that these will be a better reflection of the volume and range of demand for SCs from other providers.

3.69 In response to similar concerns from stakeholders about how to determine new SC price points which are not reflected in current outpayments on these ranges, we have also set out in Annex 3 how these could be addressed by using an independent body to receive and process requests for SCs. We consider that the advantages of the approach we have outlined are threefold: it streamlines the process for identifying a single set of price points which are likely to be made available by all OCPs; it avoids the risk of potentially unlawful information exchange between competitors; and takes due account of the interests of all parties in the SCs that are set. Overall, we consider that the process will improve certainty and facilitate the timely implementation of the unbundled tariff. While we expect industry to take the lead in developing such a process, we will continue to work closely with stakeholders to provide guidance and assistance as appropriate.

Final decision

3.70 The stakeholder comments we received on the issues of further consultation (or in relation to other issues) have not led us to change our overall assessment and therefore we have decided to implement the unbundled tariff on the 084, 087, 09 and 118 number ranges. Our reasoning and justification for this decision is set out in detail in the April 2013 policy position, and supplemented by the discussion of the specific points outlined above (and in more detail in Annexes 1, 2, and 3).

3.71 In summary this decision means that, taking into account the points outlined above, from 26 June 2015 (18 months from the GC modifications coming into force) the charges for all consumer calls to 084, 087, 09 and 118 will be unbundled into an AC and SC. We will also be imposing the specific tariff principles and transparency requirements outlined in paragraphs 3.47 to 3.48 above through modifications to the General Conditions, Numbering Plan and PRS Condition (see Annexes 8 to 10). We have, however, amended the tariff principle relating to the inclusion of the AC in call bundles so that OCPs will be able to vary that inclusion by number range. In addition, we have set out further guidance in Annex 4 on the approach to establishing SC price points.

Section 4

Making 080 and 116 free-to-caller

Introduction

4.1 In this section we set out our decision to make the 080 and 116 ranges free-to-caller for consumers, from both fixed and mobile telephones. We provisionally made this decision in the April 2013 policy position; however, this was dependent on certain issues on which we were further consulting (set out in more detail below).

4.2 We received a number of stakeholder comments in response to the April 2013 policy position and we have considered these carefully in coming to our decision. Those comments, and our response to them, are set out in more detail in the relevant Annexes (highlighted below). In this section we therefore set out our decision on the issues on which we consulted, as well as highlighting some additional changes we have made to our analysis as a result of stakeholder comments.

4.3 We carried out a detailed assessment in the April 2013 policy position and have not reproduced all of that analysis below. We have instead summarised our assessment and included cross-references to where further details of our analysis and evidence can be found in the April 2013 policy position, and updated this where relevant. This section should therefore be read in conjunction with our earlier analysis.

4.4 This section is structured as follows:

- first, we set out a summary of our impact assessment for the 080 range, including our misdialling cost estimates (on which we consulted in April 2013). Stakeholder comments, and our response, on these cost estimates are set out in Annex 1. Annexes 2 and 5 set out stakeholder comments received on our impact assessment and the range of origination charges used as part of that assessment;

- second, we set out a summary of our impact assessment for the 116 range;

- third, we set out our decision to make the 080 and 116 ranges free-to-caller; and

- finally, we summarise our decision to impose an access condition on CPs that terminate calls to free-to-caller 080 and 116 numbers – this decision includes some modifications to the condition we consulted on in April. Annex 6 sets out stakeholder comments in relation to the access condition, and our response, in more detail.

Impact assessment for the 080 range

4.5 The 080 range is currently designated as ‘Freephone’, which means that a call to a 080 number must be free of charge, except where a pre-call announcement is made notifying the caller that a charge will be made. At present, fixed line providers do not normally charge for calls to the 080 range, although most mobile providers charge for these calls. Further background to the 080 range (including typical usage, wholesale arrangements and retail prices) can be found in Section 11 (Part C) of the April 2013 policy position.

4.6 In this sub-section we describe the consumer harm we have identified on the 080 range, the options for intervention we considered in the April 2013 policy position and then set out our assessment of each of these options. In each case, we first summarise our approach in the April 2013 policy position and then set out our updated analysis and conclusions. We then set out our overall conclusion in relation to the 080 range.

Consumer harm and options for intervention

Summary of approach in April 2013 policy position

4.7 In section 13 (Part C) of the April 2013 policy position, we set out our policy preference that calls to 080 numbers should be free-to-caller.[53] However, we also presented evidence of market failures and consumer harm arising from the current operation of the 080 number range, and assessed the impact of a free-to-caller approach (as well as the alternative regulatory option we considered) by reference to a number of different criteria.

4.8 We set out our view of the consumer harm and market failures that arise on the 080 number range in Section 4 and Annex 8 (Part A) of the April 2013 policy position. We identified the following three market failures:

- **lack of consumer price awareness**: we said that, consumer confidence in the pricing of 080 calls is surprisingly low, despite the 080 number range being the most recognised and popular non-geographic number range.[54] We presented evidence of consumer price confusion, even on fixed lines (despite the consistent pricing of 080 calls from fixed lines, i.e. free);

- **the vertical externality**:[55] we considered that evidence from our survey of SPs on the 080 range indicated that a significant proportion would like a genuinely free-to-caller number, however, the preferences of those SPs were not being met because mobile OCPs did not have the incentives to take account of these SP preferences. We noted that a handful of SPs had been able to negotiate directly with mobile OCPs in order to obtain a free-to-caller 080 number, but presented evidence of significant difficulties in that negotiation process, with high transaction costs and a negotiating power imbalance. We therefore considered it clear that SPs are denied a choice of a true free-to-caller service despite the willingness of some SPs to fund such a service.

- **the horizontal externality**:[56] we considered that consumer confusion over the pricing of 080 calls suggested that the actions of mobile CPs with respect to retail prices for those calls was influencing consumer perceptions with respect to the prices for those calls from a fixed line. This confusion over the price of fixed calls

[53] We explained the background to this policy preference at paragraphs 13.4 to 13.7 (Part C) of the April 2013 policy position.
[54] 080 has the highest volumes of calls of all the non-geographic number ranges. 2010 Flow of Funds study, p.44.
[55] By this we mean that OCPs are not sufficiently motivated by the preferences of SPs on non-geographic numbers and therefore do not take into account the impact of their call pricing decisions on these SPs when setting their retail prices.
[56] By this we mean that individual OCPs and SPs do not have an incentive to take into account the impact of their NGC pricing on the reputation/brand of the 080 number range, or on non-geographic numbers as a whole.

to 080 numbers appeared to us to be linked to consumers' expectations about the price of calls to other number ranges, including the 0870 and 0845 ranges. In addition, we presented evidence that some consumers may be overestimating the price of 080 calls, and therefore they could be deterred from making 080 calls as a result.

4.9 We stated that these market failures were leading to a number of outcomes with a harmful impact on consumers:

- demand for 080 calls is suppressed;
- the prices of 080 calls (specifically 080 mobile calls) are not set at efficient levels;
- SPs may be prevented from providing certain services on the 080 number range, and may not have sufficient incentives to invest in service availability and innovation; and
- loss of access to socially important services on the 080 number range, particularly for vulnerable customers.

4.10 We considered there to be significant evidence of consumer detriment in relation to the 080 number range, which warranted our intervention. Our policy objective was to address these market failures and to develop a structure which protects consumers from these harms. We consulted on and assessed two options for the 080 range:

- **Option 1: free-to caller:** set a maximum price of zero that applies to all OCPs, fixed and mobile; and
- **Option 2: Maximum Mobile Price ('MMP')**: set a maximum price of zero for all fixed calls, and a maximum price above zero for mobile calls to 080 numbers.[57]

Updated analysis and final conclusions

4.11 We did not consult on this aspect of our assessment in the April 2013 policy position (as it had been subject to earlier consultation). We consider that our analysis of the market failures and consumer harm arising on the 080 range remains valid and that the options for intervention that we have assessed are appropriate in the circumstances.

Assessment of Option 1: free-to-caller

Summary of approach in April 2013 policy position

4.12 Before assessing Option 1 against our assessment criteria, we first set out certain assumptions we had made in order to analyse the impact of a free-to-caller option:[58]

- **Impact Assessment Range ('IAR'):** In order to assess the impact on CPs, SPs and callers of making the 080 range free-to-caller, we needed to make assumptions about the likely level of mobile and fixed origination charges that

[57] See paragraphs 13.4 to 13.23 (Part C) of the April 2013 policy position.

[58] See paragraphs 13.25 to 13.33 (Part C) of the April 2013 policy position. Our assumptions about IARs and fixed to mobile substitution were explained in more detail in Section 12 of that document. We also assumed that a free-to-caller approach would be implemented in 2014.

would apply under this option. We assumed two ranges for mobile origination payments and one range for fixed origination payments:

- fixed IAR: 0.3 to 0.6ppm;
- mobile base case scenario range: 1.3ppm to 3ppm (within which we placed most weight on the 1.5-2.5ppm range);[59] and
- mobile IAR: 1.0ppm to 3.7ppm.

With respect to the mobile ranges, we derived the base case scenario range by applying our framework for assessing origination charges to the evidence available to us.[60] We considered that mobile origination payments were most likely to fall within this range and, in conducting our impact assessment, we therefore placed most weight on costs and benefits associated with a mobile origination payment within this range. Within the base case scenario range, we placed less weight on the extreme ends of the range (e.g. below 1.5ppm or above 2.5ppm) because we considered these payments to be fair and reasonable in a more restrictive set of circumstances than we would payments closer to the middle of the range. We also adopted a wider mobile IAR to assess the impact of a free-to-caller approach, in order to take account of uncertainties around some of the assumptions we had made in deriving the base case scenario range and to improve the robustness of our decision-making. We considered it very unlikely that mobile origination payments would fall within the wider mobile IAR and therefore considered the costs and benefits associated with payments within this wider range for the purposes of robustness only.[61] We only adopted one IAR range for fixed origination charges, as we considered there to be less uncertainty about the likely range of these charges.

- **Impact on demand (fixed to mobile substitution):** We explained that fixed to mobile substitution was likely under the free-to-caller option and considered it reasonable to assume that the share of 080 calls originated from mobile was likely, over time, to reach 45% to 60%.
- **Impact on demand (overall demand):** We considered that, although it was difficult to predict the exact impact of making 080 free-to-caller, it was likely that

[59] However, we excluded from our base case scenario range any combination of scenarios that resulted in an SP average outpayment of less than 1ppm or more than 1.5ppm, as we did not consider that such an average SP outpayment would be fair and reasonable (see paragraph 12.139 (Part C) of the April 2013 policy position). The average SP outpayment is dependent on the level of fixed and mobile origination payments and the relative proportions of fixed and mobile originated calls.

[60] In the April 2013 policy position, we proposed that, if we proceeded to make the 080 range free-to-caller, then we should also set an access condition on CPs that terminate calls to these numbers. The access condition would require these CPs to purchase wholesale call origination on fair and reasonable charges. In order to facilitate commercial negotiations on origination payments, we also consulted on draft guidance as to how we would resolve any future dispute as to whether charges are fair and reasonable, which included a framework for assessing origination charges. We considered it likely that, in practice, if the 080 range were made free-to-caller then origination charges would be agreed commercially (or set by us in a dispute) with reference to this guidance. In reaching an assumption about likely origination charges for the purposes of our impact assessment, we therefore considered it appropriate to also draw on the framework that was set out in our draft guidance for assessing origination charges.

[61] See paragraphs 12.167 to 12.169 (Part C) of the April 2013 policy position.

greater consumer confidence in call prices, as well as lower actual call prices from mobiles, would create an increase in overall demand.[62]

4.13 We then assessed the free-to-caller option against the following criteria:

- consumer price awareness;
- efficient prices;
- service quality, variety and innovation;
- access to socially important services; and
- regulatory burden.

4.14 Our provisional view is summarised below, although reference should be made to Section 13 of the April 2013 policy position for the full detail of our assessment and the evidence upon which it was based.[63]

Consumer price awareness

4.15 We considered that making the 080 range free-to-caller would be the most effective means of addressing the issues of consumer price awareness on the 080 range. In particular, SPs would be able to provide a clear pricing message in their advertising to consumers (unlike at present) and the simplicity of the 'free' pricing message would make it easy for consumers to learn and remember (as well as being easy for OCPs and SPs to communicate). We considered that this message would be further reinforced through promotion by mobile OCPs, Ofcom's general communication activities and the fact that we would be bringing the UK into line with many other countries in which a free-to-caller number is associated with the 080 prefix. We therefore considered that making 080 free-to-caller would significantly improve consumer price awareness and act to protect consumers from the harm arising from the confusion and lack of confidence in 080 call prices. We also considered there to be wider benefits to consumer confidence – in particular, given the high profile nature of 080, we expected this change to contribute significantly to efforts to increase consumer confidence in non-geographic numbers generally.[64]

Efficient prices

4.16 We considered that a free-to-caller approach would help to address the negative vertical and horizontal externalities we had identified and enable 080 prices to better reflect consumer preferences compared to the status quo. We stated that this would offer significant benefits and improve consumer perceptions of the prices of 080 fixed calls.[65]

[62] However, we did not assume an increase in demand for 080 calls in all parts of our impact assessment. We assumed static demand in our estimates of the potential TPE (the TPE is considered further below). We did this primarily for the purposes of simplicity, because it was difficult to predict with accuracy the actual extent of the likely increase in demand.
[63] See paragraphs 13.34 to 13.91 (Part C) of the April 2013 policy position.
[64] See paragraphs 13.37 to 13.39 (Part C) of the April 2013 policy position.
[65] See paragraphs 13.40 to 13.42 (Part C) of the April 2013 policy position.

4.17 We also considered the extent to which a free-to-caller approach was likely to lead to a rebalancing of call charges (i.e. the price for other types of calls could increase as a result of a reduction in revenues from 080 calls). We referred to this as the tariff package effect ('TPE'). Our analysis suggested that the TPE was likely to be as follows (our estimates of the TPE were dependent on the assumptions made about the level of origination payments and the amount of fixed to mobile substitution):[66]

- mobile TPE (base case scenario range): -£24m to +£21m;
- mobile TPE (wider IAR): -£39m to +£70m; and
- fixed TPE: -£10m to -£25m.

4.18 We recognised that the more pessimistic scenarios were not insignificant amounts, but we noted that the impact on both fixed and mobile callers via the TPE was likely to be relatively small compared to the overall revenues in each market.[67] We also noted that the existence of a TPE was not necessarily undesirable, as existing mobile 080 prices were likely to be inefficient and unlikely to reflect consumer preferences. As a result, at least some rebalancing of prices between mobile 080 calls and other mobile services was likely to be beneficial.[68]

4.19 We acknowledged that a free-to-caller approach would not provide callers with a price signal which reflects the additional costs of originating mobile calls (compared to the costs of originating fixed calls) and this may result in some callers using their mobile phones too frequently (rather than their fixed lines). We therefore accepted that the mix of calls arising under a free-to-caller approach may not be at the *most* allocatively efficient level, but we considered it likely to be an improvement compared to the status quo.[69]

4.20 In summary, we considered that a free-to-caller approach would lead to a more efficient pattern of prices than the status quo - particularly for mobile origination payments within our base case scenario range. For mobile origination payments below this level and towards the lower end of the IAR, we still considered the benefits to pricing efficiency from addressing the vertical and horizontal externalities would be significant and would represent an improvement in pricing efficiency over the status quo. Nonetheless we recognised there would be a more material negative mobile TPE in these scenarios.

[66] We noted that our estimates in all scenarios were likely to overstate the impact of any adverse TPE on callers (and understate the impact of any positive TPE on callers) because the calculations assumed no overall increase in demand resulting from making 080 free-to-caller, whereas we considered that some increase in demand was likely as a result of improved consumer confidence in prices. We also noted that the numbers would overstate the impact of any TPE on callers (positive or negative) because we had assumed a complete TPE (i.e. 100%) and this was unlikely.
[67] In 2012 mobile retail revenues were £15.1bn (Figure 5.1, Ofcom 2012 CMR, p.281). The 2010 Flow of Funds study indicates that mobile retail revenues from non-geographic calls in 2009 were £610m (p.9). In 2012 fixed access and call revenues were £8.9bn (Figure 5.1, Ofcom 2012 CMR, p.281). The 2010 Flow of Funds study indicates that fixed retail revenues from non-geographic calls in 2009 were £1255m (p.9).
[68] See paragraphs 13.43 to 13.51 and Annex 28 (Part C) of the April 2013 policy position.
[69] See paragraphs 13.52 to 13.53 (Part C) of the April 2013 policy position.

Service quality, variety and innovation

4.21 We cited evidence which suggested that a significant proportion of SPs would like a free-to-caller number, but we recognised that there were two conflicting factors at play in terms of the impact on service availability:

- improved consumer confidence, lower mobile call prices and the resulting increase in demand were likely to increase the attractiveness of the 080 range for SPs, thereby encouraging service availability and innovation. Making 080 free-to-caller was also likely to have a positive effect on service availability by allowing SPs to introduce more innovative business models, such as reverse-charge and advertising funded services; but

- higher origination charges were likely to lead to lower service availability and quality as a result of increased SP outpayments leading to migration/loss of some services from 080 and potentially other cost mitigation strategies (e.g. SPs remaining on the 080 range but reducing the impact of increased mobile origination charges through cost mitigation strategies such as routing mobile calls to an automated message).[70] Higher SP outpayments were mostly driven by the increase in mobile origination payments and the share of calls originated from mobile (whereas the changes in fixed origination payments and the share of calls originated from fixed had a limited impact on SPs' payments).

4.22 With respect to the second of these effects:

i) We estimated that the costs to SPs were likely to be between £20m and £64m for mobile origination charges within our base case scenario range, and between £5m and £127m for our wider mobile IAR.

ii) We considered it likely that 19% of SPs could get rid of their 080 number if mobile origination charges were within our base case scenario range. However, we acknowledged that migration may be higher if mobile origination payments were higher, and that between 28% and 36% of SPs might migrate in the most extreme scenarios (if mobile origination charges were towards the upper end of our wider IAR and fixed-mobile substitution were also high). However, we considered these scenarios to be very unlikely and placed more weight on SP migration of 19% as we considered it most likely that origination charges would fall within our base case range. We considered that the impact on consumers would depend on whether SPs chose to migrate to another range (and the range they migrate to) or to withdraw their service altogether.[71]

4.23 We noted that the balance between the two opposing effects depended on the level of mobile origination charges. For our base case scenario range, we considered that the benefits to service availability were likely to be significant and to outweigh the negative effects of a loss of some existing services, leading to an overall improvement in service availability relative to the status quo. Our survey evidence suggested that, for mobile origination charges within our base case scenario range, a significant proportion of SPs would like a free-to-caller 080 number range, and we considered that this indicated that SPs themselves recognised the benefits of this approach. We recognised that the greater reduction in service availability at higher levels of mobile origination charges implied that the balance between the two

[70] See paragraphs 13.55 to 13.56, 13.58 and 13.67 to 13.70 (Part C) of the April 2013 policy position.
[71] See paragraphs 13.57 and 13.59 to 13.66 (Part C) of the April 2013 policy position.

opposing effects became less favourable, whereas it was more favourable for mobile origination charges towards the lower end of our IAR. However, we considered that mobile origination charges at either of these levels were very unlikely.[72]

Access to socially important services

4.24 We considered that making the 080 range free-to-caller would improve access to socially important services for vulnerable consumers,[73] because they would no longer be charged for calling socially important 080 services from a mobile (which we considered was likely to be of particular benefit to vulnerable consumers who only have access to a mobile phone) and because a single ‘free’ price point was likely to ensure that vulnerable consumers are not deterred from calling 080 numbers to access socially important services.[74]

4.25 Our evidence suggested that SPs providing ‘socially significant’ services were more likely to consider it ‘very important’ that their 080 numbers were made free-to-caller. However, we recognised that certain types of SP who provide socially important services (e.g. charities and not-for-profit services) may find it difficult to absorb increases in mobile origination charges and may choose to migrate, cease their service altogether or adopt other cost mitigation strategies, to the detriment of socially important service availability. We considered this difficult to predict with any precision. However, we expected that origination charges towards the lower end of our base case scenario range (and below) would limit any negative impact of making the 080 range free-to-caller on socially important services, particularly on those not-for-profit bodies and charities who may find it more difficult to afford increases in origination charges. At the higher end of our base case scenario range, we recognised there was greater potential for a negative impact on access to these services, but we placed less weight on origination charges at this upper end (see paragraph 4.12 above). We also noted that other types of socially important SPs (e.g. Government departments, utilities etc), which make up the majority of socially important services on the 080 range, are likely to have less difficulty in affording any increases in origination charges and access to these services is therefore less likely to be negatively impacted by higher charges.[75]

4.26 As a result, we considered that the potential negative impacts on the provision of socially important services on the 080 range were likely to be outweighed by the significant benefits of making 080 free-to-caller - particularly for origination charges towards the lower end of our base case scenario range (and below). In particular, we considered there would be significant benefits from ensuring that mobile-only households are not deterred from accessing socially important services on the 080 range which were likely to outweigh any negative impact of migration or cost mitigating measures associated with origination charges of this level.

[72] See paragraphs 13.71 to 13.74 (Part C) of the April 2013 policy position.
[73] Our definition of socially important services was set out in Section 4 (Part A) of the April 2013 policy position. A wide range of socially important services are provided on the 080 number range, including Government services, utility providers (e.g. gas, electricity and telephony providers), charities and not for profit services. Some of these services are already free-to-caller. Our evidence indicated that up to 30% of services on the 080 range could fall within our definition of ‘socially important’ and that around 10% of these services (i.e. 10% of the 30%) are charities and/or not for profit, and that the remaining 90% are mostly Government departments and utility providers.
[74] See paragraphs 13.75 to 13.77 (Part C) of the April 2013 policy position.
[75] See paragraphs 13.78 to 13.81 (Part C) of the April 2013 policy position.

Regulatory burden

4.27 We noted that a free-to-caller approach on the 080 range would result in costs for CPs, SPs and potentially callers. We considered that the total one-off costs of making the 080 range free-to-caller could be in the range of £8.8m to £33m for mobile origination charges within our base case scenario range (and in the range of £8.8m to £57.5m for mobile origination charges within our wider IAR). These figures were made up of SP migration costs, misdialling costs (including consumer time costs) and communication costs.[76] Our assessment indicated that there was unlikely to be any material increase in ongoing costs (other than the increase in the mobile origination charge for SPs remaining on the range, which we discuss in the next paragraph).[77]

4.28 We stated that there would also be significant costs to SPs as a result of the increased origination charges. As noted above, a mobile origination payment within our base case scenario range would imply an increase in ongoing costs for SPs of between £20m and £64m. For origination payments within our wider IAR, the impact on ongoing costs for SPs could be higher than this - up to £127m. However, we noted that these costs did not represent additional resource costs (unlike the migration, misdialling and communications costs discussed above) but instead represented a rebalancing of payments, i.e. they change who pays for the cost of originating 080 calls from mobiles (callers or SPs), rather than creating an additional cost.[78]

Overall assessment

4.29 Taking the above criteria together, we said that our assessment of the overall impact of making 080 free-to-caller depended on the assumption we made about the level of mobile origination charges. We considered that mobile origination charges were most likely to lie within our base case scenario range - and especially within the range of 1.5ppm and 2.5ppm – and that making 080 free-to-caller in this scenario would be likely to bring significant net benefits to both callers and SPs.

4.30 If mobile origination charges were towards the lower end of our IAR (between 1ppm and 1.3ppm), we considered that making 080 free-to-caller would still result in net overall benefits, but these net benefits would be smaller than for origination charges within our base case scenario range. If mobile origination charges were towards the upper end of our wider IAR (between 3ppm and 3.7ppm), particularly if fixed-mobile substitution were also high, then we considered it more finely balanced as to whether the benefits to consumer price awareness and pricing efficiency would outweigh the regulatory burden and potentially adverse effect on service availability. However, we considered these extreme scenarios to be very unlikely because of the requirement for origination charges to be fair and reasonable and our proposed guidance on how we would approach any dispute about fair and reasonable charges (which we had applied to currently available evidence in order to derive the base case scenario range, on which we placed the greatest weight).[79]

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[76] We also assessed billing costs but considered that these would not be material.
[77] See paragraphs 13.83 to 13.85 (Part C) and Annex 10 (Part A) of the April 2013 policy position.
[78] See paragraph 13.86 (Part C) of the April 2013 policy position.
[79] See paragraphs 13.87 to 13.92 (Part C) of the April 2013 policy position.

Updated analysis and final conclusions

4.31 Since the April 2013 policy position, we have revised our assumptions about the IAR and fixed-to-mobile substitution due to updated cost information and more recent time series data becoming available in the intervening period and in light of stakeholder comments on the specific points on which we were consulting.[80] We also now assume that a free-to-caller approach will be implemented in mid-2015. We also consulted in April 2013 on our estimates of misdialling costs (including consumer time costs) and have received stakeholder comments in response. We discuss the IAR, fixed-to-mobile substitution and our cost estimates in turn below and, in light of this, we then consider whether any revisions are required to the assessment of Option 1 (free-to-caller) that we set out in the April 2013 policy position.

Impact Assessment Range (IAR)

4.32 As discussed at paragraph 4.12 above, we assumed a base case scenario range for mobile origination charges of 1.3-3ppm in the April 2013 policy position (although we placed more weight on values between 1.5-2.5ppm). We also assessed the impact of a free-to-caller approach against a wider mobile IAR of 1-3.7ppm for the purposes of robustness. In the case of fixed origination, we assumed a single IAR of 0.3-0.6ppm.

4.33 In Annex 5, we set out stakeholder comments on the analysis we used to derive these assumptions, our response to those comments and our updated analysis. As noted above, in parts of our analysis, we have also reflected more updated data that has become available since April 2013.

4.34 Annex 5 also sets out the framework that we have applied in order to derive our assumptions about likely origination charges. This framework is reflected in the final 080/116 Dispute Guidance, which we are also publishing today. We expect origination charges for a free-to-caller 080 range to be set with reference to the framework set out in this guidance (either through commercial negotiations or by us in a dispute determination). We therefore consider it appropriate to apply the same framework to the available evidence in order to reach assumptions about the likely level of origination charges that will emerge in practice, for the purposes of our impact assessment. This framework is based on three cumulative principles that we have previously used in determining disputes about 080 origination charges[81] and takes into account comments received in response to the draft 080/116 Dispute Guidance. These are:

- **Principle 1:** OCPs should not be denied the opportunity to recover their efficient costs of originating calls to a free to caller number range.

- **Principle 2:** the origination charge should be beneficial to consumers, taking into account the following factors:

  - o Indirect effect: impact of the proposed origination charge on service provider (SP) costs, and on callers through resulting relevant decisions by SPs such as the impact on service availability and cost mitigation measures;

[80] Our third underlying assumption about the overall increase in demand remains unchanged from that summarised above. As in April 2013, we do not take into account this expected increase in demand in all parts of our impact assessment, primarily for the purposes of simplicity.
[81] 080 Dispute Determination, paragraphs 1.17 to 1.21.

  - o Tariff Package effect: impact of the proposed origination charge on OCPs' retail prices for other services; and
  - o Competition effect: impact of the proposed origination charge on competition, whether beneficial or detrimental.

- **Principle 3:** the origination payment should be practical to implement.

4.35 Taking into account stakeholder responses to our April 2013 policy position and any updated evidence, our revised assumptions about origination charges are as follows:

- fixed IAR: 0.4 to 0.5ppm;
- mobile base case scenario range: 1.5ppm to 2.4ppm;[82] and
- mobile IAR: 1.0ppm to 3.7ppm.[83]

4.36 We have therefore narrowed both our fixed IAR and mobile base case scenario range since April 2013. We consider it most likely that origination charges will fall within the mobile base case scenario range and the fixed IAR (as they are derived by the application of the framework set out in the 080/116 Dispute Guidance to the currently available evidence). In common with our position in April 2013, we have, however, also adopted a wider mobile IAR when assessing the impact of a free-to-caller approach for the purposes of robustness. The wider mobile IAR is the same as that used for the assessment in the April 2013 policy position.

4.37 We explain the reasons for the changes in our IAR assumptions in full in Annex 5, where we also set out a number of clarifications regarding how we apply the Principles in response to stakeholder comments. We summarise the key points in relation to each Principle here.

4.38 We clarify that the role of Principle 1 is to ensure OCPs are not denied the opportunity of recovering efficient costs. However, because the decision to make 080 free-to-caller means that origination costs will no longer be recovered from callers but will instead be recovered from origination charges billed to SPs, we consider it appropriate to assess whether SPs should contribute to the entirety of the costs that were previously recovered from callers through retail prices. Our application of Principle 1 therefore involves an assessment of the costs that we consider are efficiently incurred and relevant to recovery through the origination charge. This leads to a range of cost-based origination charges that we consider would all satisfy Principle 1, from pure LRIC to a measure of LRIC+ that excludes A&R costs. We do not form a view on which of these measures of cost it would be appropriate to recover through the origination charge under Principle 1 but instead assess this issue with reference to the impact on consumers under Principle 2.

4.39 We have updated our estimates of fixed and mobile origination costs to reflect:

[82] However, we exclude from our base case scenario range any combination of scenarios that result in an SP average outpayment of more than 1.5ppm, as we do not consider that such an average SP outpayment would be fair and reasonable (see paragraphs A5.293 to A5.295 in Annex 5). The average SP outpayment is dependent on the level of fixed and mobile origination payments and the relative proportions of fixed and mobile originated calls.

[83] We explain in more detail how we have arrived to these revised assumptions about origination payments in Annex 5.

- the latest cost modelling in the NMR statement in relation to fixed network costs;
- the inclusion of billing costs to reflect billing systems costs associated with wholesale billing activities;
- an updated inflation adjustment factor; and
- a correction to an error in the mobile cost model (some of the cost items previously reflected costs in 2013/14 rather than 2015/16).

4.40 This results in a range of fixed origination charges consistent with Principle 1 of between 0.035-0.059ppm and 0.4-0.5ppm. Our estimate of the range of mobile origination charges consistent with Principle 1 is between 0.78ppm and 3.33ppm.

4.41 We continue to distinguish our application of Principle 2 into two steps: Step 1, in which we assess the trade-off for consumers between service availability and the TPE, and Step 2, in which we assess the relative level of the fixed and mobile origination charge. In both of these Steps, we assess how SPs' decisions are affected by the level of origination charge. In doing so, we distinguish between two different decisions made by SPs, which both impact on consumer welfare and are therefore relevant to an assessment of the appropriate origination charge. The first of these is the exit decision, i.e. the decision by SPs regarding whether to stay on (or join) 080 when it is made free-to-caller, which affects overall service availability on 080 and is assessed under Step 1 of Principle 2. The second of these is the cost mitigation measures decision, i.e. the decision by SPs remaining on 080 regarding whether and to what extent to deploy cost mitigation measures, and is assessed under Step 2 of Principle 2.

4.42 In our assessment of Step 1, we clarify that we are interested in comparing the *change* in service availability associated with a particular increase in origination charges with the *change* in the TPE associated with the same increase in origination charges. We also clarify that we assess the consumer impact of increases in origination charges starting from the lower bound of pure LRIC derived under Principle 1, assuming 080 is already free-to-caller. We consider increases in the origination charges in terms of increases in the average SP outpayment for ease of comparison with our evidence on service availability.

4.43 We look at the impact on consumers from a reduction in service availability in more detail than we did in the April 2013 policy position, taking into account the cumulative impact of:

- SPs cancelling their service altogether (i.e. no longer offering a service that can be accessed by means of calling a non-geographic number);
- SPs migrating to another number range (e.g. 03 or 0845);
- fewer new SP users being attracted to the range; and
- wider costs resulting from a reduction in service availability/quality on 080.[84]

[84] We also refer to the impact of SPs using cost mitigating measures to reduce the costs associated with calls from mobiles in this assessment. However, we do this for completeness only and do not take this impact into account under Step 1 because we consider it is influenced to a greater extent by

4.44 We consider that the cumulative impact of these effects may result in significant detriment to consumers and we place particular weight on the risk of weakening the benefits of making 080 free-to-caller at greater levels of service reduction. We recognise that the positive impact on consumers of a favourable change in the TPE resulting from an increase in SP outpayments may be considerable. However, it is our judgement that where an increase in the SP outpayment leads to a material reduction in service availability, the overall harm to consumers is likely to exceed the benefits from the associated change in the TPE.

4.45 Our evidence on service availability suggests that some SPs will choose to get rid of their 080 number for any increase in their average outpayment. However, taken at face value, the same evidence suggests the average outpayment could be increased by up to 1ppm without triggering any further reduction in service availability. Given that increases in the average SP outpayment up to this point may result in a favourable change in the TPE without any material effect on service availability, we note that increasing the average SP outpayment by this full amount (i.e. increasing by 1ppm) would appear to be to the benefit of consumers. However, we then consider whether there are any factors, notably the caller externality and asymmetric risk, which would support limiting the increase in SP outpayments to below this level.

4.46 We continue to consider that SPs may not fully take into account the higher cost to consumers of accessing migrated services when they make the decision about whether to migrate or not, giving rise to the caller externality. However, in contrast to the April 2013 policy position, we now consider that we do not need to take the caller externality into account separately from our assessment of the trade-off between service availability and the TPE. As a result, we no longer consider the caller externality is a reason to limit the increase in SP outpayments to below 1ppm.

4.47 In considering the potential for asymmetric risk, we clarify that we are conscious the actual reduction in service availability associated with a given increase in SP outpayment may be greater or smaller than our evidence suggests; and that we have no reason to believe that over- or under-estimation is more likely. However, we consider the potential harm to consumers from under-estimating the impact on service availability could be significantly greater than the harm from over-estimating its likely effect, giving rise to an asymmetric risk in determining the appropriate increase in SP outpayment. We consider this asymmetric risk may provide an argument for limiting the increase in SP outpayment to less than 1ppm. We assess the issue of how much lower this should be under Step 2, when considering the LRIC differential because, whilst motivated by different concerns, the asymmetric risk and LRIC differential are both addressed by reducing the level of the mobile origination charge.

4.48 In Step 2, we look at the level of fixed and mobile origination charges that would be likely to result in an average SP outpayment of the amount determined under Step 1, given our assumptions about the relative volumes of fixed and mobile calls. We have updated our assumptions regarding the likely extent of fixed-mobile substitution in light of more recent observations for some of the evidence presented in the April 2013 policy position. As a result, we now consider that it is appropriate to assume implementing a free-to-caller approach is likely to increase the share of calls to 080 originated from mobile to somewhere between 55-60%. As a result of this and the

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the relative level of the fixed and mobile origination charges than it is by the average SP outpayment. As a result, we take this impact into account when we consider the relative level of fixed and mobile charges under Step 2.

updates to our cost estimates, we also revisit the level of fixed and mobile charges consistent with the appropriate SP outpayment derived under Step 1. This assessment results in fixed origination charges of between 0.4-0.5ppm and mobile origination charges of up to 2.4ppm.

4.49 The relative level of the fixed and mobile origination charge has implications for the incentives for SPs to mitigate the costs of more expensive mobile-originated calls (e.g. by shortening the duration of more expensive mobile-originated calls or playing recorded announcements that re-direct mobile callers to another number). We remain of the view that the price signal for SPs regarding the extent to which they use these cost mitigation measures will not be efficient when the difference between fixed and mobile origination payments is greater than the difference in the incremental costs of fixed and mobile origination. We refer to the mobile origination charge that avoids these inefficient price signals to SPs as the LRIC differential charge, which is the mobile origination charge that would make the same absolute contribution to mobile CPs' fixed and common costs as fixed CPs receive. We estimate this to be between 1.12-1.35ppm.

4.50 In our updated analysis, we recognise that the use of these cost mitigation measures may reduce the risk of SPs exiting the free-to-caller number ranges, which would benefit consumers. However, we also consider they may adversely affect the consumer experience of calling from a mobile phone and, if used to a large extent, could risk weakening some of the key benefits of our intervention. In light of this potential for consumer detriment, we remain of the view that we should place some weight on the negative impact that mobile origination charges above the LRIC differential could have in distorting the price signals to SPs. Additionally, we consider that further arguments for SPs making the same absolute contribution to the common costs of fixed and mobile originating CPs are that many SPs are likely to derive the same benefit independently of whether the call originates from a mobile or fixed line (even if there are some exceptions to this), and avoiding distortions to competition between fixed and mobile networks.

4.51 We consider it appropriate to make a trade-off between sending efficient price signals for cost mitigation measures on the one hand and striking the right balance between service availability and the TPE on the other, because of the impact of these effects on consumers. We take this trade-off into account by setting the lower bound for the mobile origination charge at 1.5ppm, which takes into account the desirability of efficient price signals regarding cost mitigation measures but is above the actual LRIC differential charge of 1.1 to 1.3ppm. We consider that a mobile origination charge of 1.5ppm, which implies an average SP outpayment of about 1.0-1.1ppm, is also likely to provide sufficient allowance for asymmetric risk- even if we place significant weight on that consideration. The choice of mobile origination charge in this range between 1.5 and 2.4ppm then depends on the relative weight we place on the adverse effects for consumers of mitigation measures relative to the balance between service availability and TPE, taking into account the asymmetric risk.

4.52 We continue to consider our IARs satisfy Principle 3 in terms of their practicality.

4.53 The application of the three Principles to current available evidence results in a range of origination charges of between 0.4-0.5ppm for fixed calls and between 1.5-2.4ppm for mobile calls. We consider whether we need to adopt a wider IAR to account for uncertainties over these estimates and to improve the robustness of our decision-making. In the case of mobile calls, we retain the wider IAR set out in the April 2013 policy position of between 1.0-3.7ppm because we consider this provides sufficient headroom for uncertainties and robustness. For fixed calls, we continue to consider there is no need to adopt a wider IAR.

Costs

4.54 In the April 2013 policy position we included a consultation question about our approach to estimating the misdialling and consumer time costs associated with making the 080 range free-to-caller. We received comments from a number of stakeholders on these cost estimates (as well as other parts of our assessment of the costs of making 080 free-to-caller). These comments, and our response, are set out in Annex 1. We have not considered it necessary to revise our cost estimates in light of these comments.

4.55 Some of our cost estimates are also dependent on our IARs, the assumption we make about fixed-to-mobile substitution and the date on which a free-to-caller approach is implemented. In Annex 1, we therefore also consider whether our revisions to these assumptions have a consequential impact on our cost estimates. Our revised estimates are slightly lower than those we set out in April 2013 (as a consequence of slightly reduced estimates of misdialling and consumer time costs due to updating them to reflect 2015/16 volumes). Our final cost estimates are set out in Table A1.5 in Annex 1.

Updated assessment of Option 1 (free-to-caller)

4.56 As our revised assumptions are, in each case, within the ranges we used in April 2013, our assessment of Option 1 (free-to-caller) remains broadly as summarised above. We set out below how (if at all) our assessment has changed with respect to each of our assessment criteria:

- **Consumer price awareness**: our assessment under this criterion is unaffected by the revisions to our assumptions and therefore remains unchanged from that summarised above (and set out in full in paragraphs 13.37 - 13.39 of the April 2013 policy position).

- **Efficient prices**: our assessment under this criterion remains as summarised above, except that our estimates of the TPE (i.e. the extent to which a free-to-caller approach is likely to lead to a rebalancing of other call charges) are slightly modified as a result of the following factors:[85]

  - our revised assumption about the mobile base case scenario range;

  - our revised assumption about the fixed IAR;

  - our revised assumption about fixed-to-mobile substitution;

[85] Our TPE estimates presented in this Section measure the total TPE (i.e. including any loss of OCP revenues that results from the 080 range being made free-to-caller), which is calculated by comparing OCP revenues under the status quo (including current system of retail prices and wholesale charges) against likely OCP revenues under a free-to-caller 080 (taking into account the reduction in mobile retail prices, fixed to mobile substitution and the likely level of origination charges). By contrast, in generating our assumptions about likely origination charges, we consider the change in the TPE associated with given increases in fixed and mobile origination charges from pure LRIC, assuming that the 080 range is already free-to-caller. See paragraphs A5.185 – A5.189 in Annex 5 for further detail.

- o updated call volumes to reflect the fact that we now expect the free-to-caller approach to be implemented in mid-2015 (see Annex 5);
- o changes to our estimates of fixed and mobile origination costs (see Annex 5);

A revised summary of our TPE estimates is set out in the Tables below. [86]

Table 4.1: Impact on mobile OCP profits from 080 of making 080 free-to-caller (compared to the status quo)[87]

Mobile origination payment	Proportion of 080 calls originated from mobiles	
	55%	60%
1.0ppm	-£34m	-£33m
1.5ppm	-£18m	-£16m
2.4ppm	+£12m	+£16m[88]
3.7ppm	+£54m	+£63m

Note: Based on 2010 Flow of Funds data

[86] As with our April 2013 estimates, we note that these revised estimates in all scenarios are likely to overstate the impact of any adverse TPE on callers (and understate the impact of any positive TPE on callers) because the calculations assume no overall increase in demand resulting from making 080 free-to-caller, whereas we consider that some increase in demand is likely as a result of improved consumer confidence in prices. We also note that the numbers will overstate the impact of any TPE on callers (positive or negative) because we assume that the TPE will be complete (i.e. 100%) and consider this is unlikely in practice.

[87] This assessment is made relative to the status quo and assuming no change in overall call volumes.

[88] For the avoidance of doubt, we note that this estimate is outside the base case scenario range as it assumes a fixed origination payment equal to 0.5ppm, which combined with a mobile origination payment of 2.4ppm and a share of calls originated from mobile equal to 60% results in an average SP outpayment exceeding 1.5ppm. We do not consider this scenario to lie within our base case scenario range for the reasons discussed in Annex 5. However, we do consider it for reasons of robustness as part of our wider mobile IAR.

Table 4.2: Impact on fixed OCPs profits from 080 of making 080 free-to-caller (compared to the status quo) [89]

Fixed origination payment	Change in overall 080 call volumes	55% of 080 calls originated from mobiles	60% of 080 calls originated from mobiles
0.4ppm	0%	-£19m	-£20m
	5%	-£18m	-£19m
0.5ppm	0%	-£16m	-£17m
	5%	-£15m	-£17m

Note: Based on 2010 Flow of Funds data

Our final estimates of the TPE are as follows:

- mobile TPE (base case scenario range): -£18m to +£12m;[90]
- mobile TPE (wider IAR): -£34m to +£63m;
- fixed TPE: -£15m to -£20m.

These estimates are a little different but still broadly consistent with the ranges we presented in April 2013 (see paragraph 4.17 above). We remain of the view that, even in the more pessimistic scenarios, the impact on both fixed and mobile callers is likely to be relatively small compared to the overall revenues in each market. We also remain of the view that the existence of a TPE is not necessarily undesirable, as some rebalancing of prices between mobile 080 calls and other mobile services is likely to be beneficial (see paragraph 4.18 above). The remainder of our assessment of efficient prices remains unchanged from that summarised above (and set out in full in paragraphs 13.40 – 13.54 of the April 2013 policy position).

- **Service quality, variety and innovation**: in assessing this criterion in April 2013, we stated that there were two opposing effects at play (see paragraph 4.21 above). Our assessment of the first of these effects - an increase in service availability as a result of improved consumer confidence and lower mobile prices – is unaffected by the revisions to our assumptions and remains as summarised above. Our assessment of the second effect – a loss in service availability – is dependent on the level of SP outpayments (which on a free-to-caller 080 number range will be mostly driven by the level of mobile origination payments). We have therefore reconsidered this in light of our revised assumptions about the ranges of origination payments and the extent of fixed to mobile substitution that we consider likely. Our revised estimates of the increase in SPs' costs are set out in the following Table.

[89] This assessment is made relative to the status quo and assuming no change in overall call volumes.

[90] We note that the £16m mobile TPE which results when the mobile origination charge is 2.4ppm and 60% of calls are originated from mobiles is outside of our base case scenario as this combination of assumptions gives rise to an average SP outpayment of more than 1.5ppm.

Table 4.3: Making 080 free-to-caller impact on SP costs (using the base case – estimates marked in red - and IAR)

Mobile origination payment	Proportion of mobile 080 calls	
	55%	60%
1.0ppm	+£11m (+17%)	+£15m (+24%)
1.5ppm	+£27m (+43%)	+£33m (+52%)
2.4ppm	+£57m (+89%)	+£65m (+103%)[91]
3.7ppm	+£99m (+156%)	+£112m (+176%)

- These estimates are within the ranges that we presented in the April 2013 policy position. We therefore remain of the view that 19% of SPs might get rid of their 080 number if mobile origination payments are within our base case scenario range. We place more weight on this migration estimate as we consider it most likely that origination payments will fall within our fixed IAR and mobile base case range. As in April 2013, we acknowledge that migration may be higher than this if mobile origination payments are above our base case range (and within the wider mobile IAR), but we consider these scenarios to be very unlikely. Given that our assessment of the likely levels of SP migration remains unchanged since April 2013, we remain of the view that our overall assessment of the balance between the two opposing effects also remains as summarised above (and set out in full in paragraphs 13.55 - 13.74 of the April 2013 policy position). That is, we consider that the benefits to service availability arising from a free-to-caller approach are likely to be significant and to outweigh the negative effects, leading to an overall improvement in service availability relative to the status quo.

- **Access to socially important services**: in assessing this criterion in April 2013, we focussed primarily on whether mobile origination charges were at the higher or lower end of our base case scenario range (see paragraph 4.24 above) because, along with our assumptions on fixed-mobile substitution, this was the most significant determinant of the costs to an SP remaining on 080 when it is made free-to-caller. We have now revised our mobile base case scenario range such that the bottom of the range has slightly increased and the top of the range has decreased from that which we used in April 2013 (due to our revised assumptions about the extent of fixed to mobile substitution and the fixed IAR). However, this revised mobile base case scenario range gives rise to the same range of average SP outpayments and an overall impact on SP costs within the range set out in the April 2013 policy position. We therefore consider that our assessment of this criterion remains appropriate in the terms summarised above (and set out in full in paragraphs 13.75 to 13.82 of the April 2013 policy position).

[91] For the avoidance of doubt, we note that this estimate is outside the base case scenario range as it assumes a fixed origination payment equal to 0.5ppm, which combined with a mobile origination payment of 2.4ppm and a share of calls originated from mobile equal to 60% results in an average SP outpayment exceeding 1.5ppm. We do not consider this scenario to lie within our base case scenario range for the reasons discussed in Annex 5. However, we do consider it for reasons of robustness as part of our wider mobile IAR.

- **Regulatory burden**: in our assessment of this criterion in April 2013, we set out our estimates of the total incremental costs of making the 080 range free-to-caller and our estimate of the extent to which costs would be rebalanced between callers and SPs (see paragraphs 4.27 to 4.28 above). As discussed above (see paragraph 4.55), our total incremental cost estimates are slightly reduced since April 2013. We have set out our revised estimates of the increase in SPs' costs (which are rebalanced from callers) under the bullet point 'Service quality, variety and innovation', above.

4.57 As our broad conclusions under each of the assessment criteria are the same as before, we consider our assessment of the overall impact of making 080 free-to-caller set out in the April 2013 policy position remains appropriate.

Assessment of Option 2: Maximum mobile price ('MMP')

Summary of approach in April 2013 policy position

4.58 We assessed two variants of Option 2:

a) **Option 2(a):** a fixed ceiling for the retail price of mobile calls to 080 numbers, set at either 6.6ppm (including VAT)); or

b) **Option 2(b):** a variable ceiling set at the same level as the AC that applies to calls to the unbundled tariff number ranges.

4.59 In both Options, the price of calling a 080 number from a fixed line would be zero.

4.60 Before assessing Option 2 against our assessment criteria, we first set out certain assumptions we had made in order to analyse its impact:[92]

- **origination payments:** We assumed that Option 2(a) had a mobile origination charge equal to our assumed fixed IAR under the free-to-caller approach (0.3-0.6ppm), although for ease of presentation we only presented estimates associated with a mobile origination payment of 0.5ppm;

- **impact on demand (fixed to mobile substitution):** We explained that some fixed to mobile substitution was likely under a MMP approach, but we were unable to estimate this precisely and we expected it to be smaller than under a free-to-caller approach. In assessing the TPE, we considered four scenarios with the proportion of mobile originated calls ranging from 5% to 30%; and

- **impact on demand (overall demand):** We considered that a MMP approach may lead to an overall increase in demand, but it was unclear how this would compare with that which we would expect under a free-to-caller approach.[93]

4.61 We then considered the MMP option against each of our assessment criteria – we have summarised that assessment below, although reference should be made to Section 13 of the April 2013 policy position for the full detail of our assessment and the evidence upon which it was based.

[92] See paragraphs 13.98 to 13.104 (Part C) of the April 2013 policy position.
[93] In assessing the potential TPE generated by the MMP approach, we assumed no overall increase in demand for the purposes of simplicity and because it was a conservative assumption.

Consumer price awareness

4.62 We considered that MMP could potentially improve consumer price awareness relative to the status quo, because SPs could be able to advertise a specific price or that the caller's AC applied to mobile calls. However, we considered there were drawbacks because the pricing message was more complex than under a free-to-caller approach and our concern about the horizontal externality would not be addressed as effectively, because consumers' experience of the price of mobile 080 calls could continue to affect their expectations of the price of fixed 080 calls (as well as other 08 number ranges).[94]

Efficient prices

4.63 We considered that MMP would have the advantage of sending price signals to consumers which encourage them to take into account the difference in the cost of fixed and mobile calls, which we considered to be an improvement on the status quo. However, we considered that the difference between the price of a fixed 080 call and the MMP would still be significantly in excess of the additional incremental cost of making a 080 call from a mobile compared to calling from a fixed line, which could lead to too few calls being made from a mobile.

4.64 We did not expect MMP to address the vertical and horizontal externalities as effectively as a free-to-caller approach, and we therefore considered it less likely to lead to prices which reflected consumer preferences. We also noted that more SPs indicated a preference for making 080 free-to-caller than the MMP approach (which we thought was likely to be a reflection of the consumer demand) and only one stakeholder (EE) indicated a clear preference for a MMP approach, whereas those groups representing consumers were strongly in favour of the free-to-caller option.

4.65 We considered it likely that MMP would lead to some re-balancing of retail prices through the TPE and, similar to the free-to-caller approach, we considered this would not necessarily be undesirable. We noted that the TPE for the MMP approach was particularly uncertain, because we had less evidence about how the proportion of fixed and mobile calls might change. We estimated the impact on mobile OCPs' incremental profits would be between -£26m and £62m and this was sensitive to the proportion of calls originated from mobiles. Although we noted that a negative impact of £26m was not insignificant, we considered it small in relation to the overall size of mobile revenues. We estimated the impact on fixed OCPs' incremental profits to be between -£20m and £3m. We noted that this was likely to be smaller than the impact of a free-to-caller approach, given that there was likely to be less fixed to mobile substitution under the MMP option.[95]

Service quality, variety and innovation

4.66 We also considered that setting a MMP was likely to improve service quality, variety and innovation relative to the status quo and we noted that it was unlikely to result in an increase in costs for SPs (as origination payments were unlikely to significantly increase). We therefore expected to see less SP migration and a more limited impact on service availability than under a free-to-caller approach. However, we noted that the potential improvements in service quality, variety and innovation depended on the extent to which setting a MMP reflected SP preferences for the 080 range. We cited

[94] See paragraphs 13.107 to 13.111 (Part C) of the April 2013 policy position.
[95] See paragraphs 13.112 to 13.120 (Part C) of the April 2013 policy position.

evidence which indicated that SPs have diverse preferences but that a higher proportion preferred a free-to-caller approach rather than setting a MMP (if mobile origination charges under a free-to-caller approach were within our base case scenario range). For those SPs setting a MMP would not meet their preferences, which in turn could indirectly affect their ability to innovate and offer new services on the 080 range.[96]

Access to socially important services

4.67 We noted that a MMP approach could improve consumers' access to socially important services to some extent compared to the status quo (because of a lower mobile call price). However, we noted that the reduction in the price of mobile 080 calls would not necessarily be significant (particularly under Option 2(b)), such that some mobile-only consumers may continue to be deterred from accessing socially important services on the range.

4.68 Although we expected MMP to lead to some improvements in price awareness, we thought there was a risk that the complexity of the pricing message and the existence of the horizontal externality could also continue to deter some consumers from accessing socially important services.

4.69 We expected most socially important services to remain on the 080 range under a MMP approach, but we noted that it would not meet the preferences of those SPs providing socially important services that would prefer a free-to-caller number range.[97]

Regulatory burden

4.70 We noted the costs of the MMP approach for industry, in particular SPs, were likely to be lower compared to making 080 free-to-caller, because mobile origination payments were unlikely to increase and therefore we did not expect as much migration away from the 080 range. Of the categories of costs that we considered for a free-to-caller approach, we considered that only communications costs would be material for MMP (between £0.2m and £3.2m) as a result of the need for OCPs to inform their customers of the changes to 080 prices and the inclusion of new mobile charges within Ofcom's wider communications campaign. We also noted that MMP would give rise to an additional regulatory cost as Ofcom was likely to need to review the MMP price on a regular basis to ensure it remained appropriate.[98]

Updated analysis and final conclusions

4.71 We have considered whether our assessment of the MMP option remains appropriate in light of stakeholder comments and our revised assumptions and estimates discussed above.

4.72 We consider that our assessment of most of the criteria (consumer price awareness, service quality, access to socially important services and regulatory burden) remains as set out in April and summarised above. Our assessment of the efficient prices criterion also remains as summarised above, except that we have re-run our estimates of the TPE that would result from a MMP approach. We now estimate that

[96] See paragraphs 13.121 to 13.125 (Part C) of the April 2013 policy position.
[97] See paragraphs 13.126 to 13.128 (Part C) of the April 2013 policy position.
[98] See paragraphs 13.129 to 13.131 (Part C) of the April 2013 policy position.

the impact on mobile OCPs' incremental profits would be between –£24m and +£56m and the impact on fixed OCPs' incremental profits would be between -£13m and -£3m. We continue to believe that the TPE for the MMP approach is particularly uncertain, because we have less evidence about how the proportions of fixed and mobile originated calls might change as a result of this approach. Our revised estimates are presented in the Tables below. They are narrower than (and in each case fall within) the TPE ranges that we presented in April 2013, and so we consider the conclusions we set out in April 2013 remain appropriate.

Table 4.4: Maximum Mobile Price for 080 – impact on mobile OCP profits from 080 (compared to the status quo)[99]

Maximum price of mobile calls (incl. VAT)	Percentage of 080 calls originated from mobiles			
	5%	10%	20%	30%
6.6ppm	-£24m	-£8m	+£22m	+£53m
AC of 10ppm	-£15m	+£9m	+£56m	Omitted
AC of 16.1ppm	+£0m	+£39m	Omitted	Omitted

Table 4.5: Maximum Mobile Price 080 – impact on fixed OCP profits from 080 (compared to status quo)

Fixed origination payment	Proportion of 080 calls from mobiles	5%	10%	20%	30%
0.4ppm	Impact on fixed OCPs' 080 incremental profits	-£8m	-£9m	-£11m	-£13m
0.5ppm	Impact on fixed OCPs' 080 incremental profits	-£3m	-£4m	-£7m	-£9m

4.73 We also received some further comments from EE on the benefits of the MMP approach (which we have responded to in Annex 2), however, these have not led us to make any changes to our assessment.

4.74 As our broad conclusions under each of the assessment criteria are the same as before, we consider our assessment of the overall impact of the MMP option set out in the April 2013 policy position remains appropriate.

[99] Where the maximum mobile price is relatively high the increase in the proportion of mobile calls is likely to be smaller. We have thus deliberately omitted the cases where the maximum price is equal to the AC but a high level of fixed to mobile substitution occurs. These cases are less plausible (they all involved an increase in mobile 080 incremental profits of over £100m).

Overall assessment of Option 1 versus Option 2

Summary of approach in April 2013 policy position

4.75 In reaching an overall assessment of Option 1 versus Option 2 in the April 2013 policy position, we first summarised the costs of each approach in quantitative terms. We explained that we did not consider it appropriate to carry out a quantitative assessment of the benefits of a free-to-caller approach, but went on to set out a qualitative assessment of the benefits of both a free-to-caller and MMP approach in respect of each of our assessment criteria (except for 'regulatory burden', which was covered by our summary of costs). We considered the benefits of each approach compared to the status quo, and then compared to each other.[100]

4.76 Having summarised both the costs and benefits of each approach, we then considered the likely scale of any net benefits for each approach (i.e. weighing the costs and benefits of each approach against each other).

4.77 We recognised the net benefits of making 080 free-to-caller were dependent on the level of origination payments. For origination payments within our base case scenario range, we considered the benefits of a free-to-caller approach were likely to be substantial and to outweigh the costs we had estimated, resulting in net benefits. We also placed weight on the wider benefits to consumer confidence in non-geographic numbers more generally that we anticipated would result from making 080 free-to-caller. We recognised there were some scenarios where origination payments were above our base case scenario range where the net benefits of making 080 free-to-caller might be more finely balanced due to higher levels of SP migration and a greater increase in ongoing costs for those SPs remaining on 080. We considered these scenarios to be very unlikely (see paragraph 4.12 above) but nonetheless recognised that the case for making 080 free-to-caller rather than setting a MMP was less clear-cut in these scenarios.

4.78 We considered that the costs and the benefits of a MMP approach were also likely to result in net benefits compared to the status quo. However, we considered that the net benefits of a free-to-caller approach, with mobile origination payments within our base case scenario range, were likely to be significantly greater than a MMP approach (despite greater cost). This was because of the greater benefits to consumer price awareness and efficiency of prices that would result from a free-to-caller approach. We considered it most likely that actual origination payments would lie within our base case scenario range, and therefore placed most weight on this assessment. However, we recognised that if actual origination payments were above our base case scenario range, the arguments in favour of free-to-caller over MMP would be less strong.[101]

Updated analysis and final conclusions

4.79 The Tables below set out our final estimates of both the incremental resource costs of each option, and the costs that we expect to be rebalanced (i.e. from callers to SPs via the increase in mobile origination payments or between different call types via the TPE).

[100] See paragraphs 13.132 to 13.149 (Part C) of the April 2013 policy position.
[101] See paragraphs 13.150 to 13.153 (Part C) of the April 2013 policy position.

Table 4.6: Comparison of costs of each option for 080

	Option 1: free-to-caller		Option 2: MMP
	Wider IAR	Base case scenario	
Billing costs	Not material	Not material	Not material
Migration costs	£3.2m to £36.0m	£3.2m to £19.0m	Not material
Misdialling costs (including consumer time costs)	£3.0m to £13.9m	£3.0m to £7.2m	Not material
Communication costs	£2.3m to £6.0m	£2.3m to £6.0m	£0.2m to £3.2m
Total additional costs	**£8.4m to £55.9m**	**£8.5m to £32.2m**	**£0.2m to £3.2m**

Table 4.7: Impact of rebalancing of 080 costs

	Option 1: free-to-caller		Option 2: MMP
	Wider IAR	Base case scenario	
Increase in SP costs	+£11m to +£112m	+£27m to +£57m	n/a
Mobile TPE	-£34m to +£63m	-£18m to +£12m	-£24m to +£56m
Fixed TPE	-£15m to -£20m	-£15m to -£20m	-£3m to -£13m

4.80 These costs are broadly similar to those we set out in April 2013.The incremental costs for Option 1 are slightly lower than those we set out in the April 2013 policy position (the incremental costs of Option 2 remain unchanged). The ranges of rebalanced costs are narrower than those we set out in the April 2013 policy position for both Options 1 and 2. We consider that the range of migration costs we have estimated for Option 1 are more likely to be towards the lower end of the range - i.e. within the range associated with 19% SP migration, and we expect our TPE estimates will overstate any impact on callers (positive or negative) because they assume that the TPE is complete (i.e. 100%) but we consider this to be unlikely.

4.81 We remain of the view that it is inappropriate to quantify the benefits of a free-to-caller approach. EE made some comments on this aspect of our impact assessment in response to the April 2013 policy position, which we respond to in Annex 2.

4.82 In qualitatively assessing the benefits of the two options, our conclusion remains the same as the provisional view we set out in April 2013. In summary:[102]

a) **Consumer price awareness:** We consider that both options for intervention are likely to lead to some improvement in consumer price awareness compared to the status quo. However, we consider that a free-to-caller approach is likely to be significantly more effective than MMP in addressing the current consumer confusion over prices and lead to greater improvements in consumer price awareness, because of the simplicity of the 'free' pricing message.

b) **Efficient prices:** We consider that both options are likely to lead to a more efficient pattern of prices than the status quo. However, we consider that a free-to-caller approach will be more effective at addressing the negative externalities than MMP, and is therefore more likely to lead to efficient prices. We consider that addressing the vertical externality is a significant benefit, as allowing prices to reflect the willingness of some SPs to subsidise consumer call charges (by making 080 free-to-caller) is likely to lead to prices which better reflect efficient price outcomes, including consumer preferences.

c) **Service quality, variety and innovation:** We consider that a free-to-caller approach is likely to improve service quality, variety and innovation on the range, leading to a net positive effect compared to the status quo (i.e. taking account of any migration/loss of service as a result of increased origination charges). We expect that setting a MMP is also likely to improve service quality, variety and innovation relative to the status quo, given that SPs will be able to advertise a clearer price for mobile calls to 080. Overall, if origination payments are within our base case scenario range (or lower), we consider that the benefits to service availability from making the 080 range free-to-caller are likely to exceed the benefits from setting a MMP. Whilst MMP would meet the preferences of some SPs on the 080 range, it would not meet the preferences of the greater proportion of SPs who would prefer a free-to-caller approach if mobile origination payments are within the base case scenario range.

d) **Access to socially important services:** We consider that a free-to-caller approach will provide significant benefits, particularly for vulnerable consumers in mobile only households who will no longer be charged for calling socially important services on the 080 range. A MMP approach could also improve consumers' access to these services to some extent compared to the status quo, but there is a risk that the complexity of the pricing message could still deter some consumers from accessing the services. Overall, we consider that a free-to-caller approach may provide greater benefits than a MMP approach if mobile origination payments are within our base case scenario range.

4.83 As our assessment of the costs and benefits of each Option remains broadly the same, we consider that our conclusions on the likely scale of net benefits set out in the April 2013 policy position remain appropriate.

4.84 We have therefore decided that making the 080 range free-to-caller (Option 1) will be most effective in addressing the consumer harm we have identified on this number range and, in doing so, in contributing to our wider efforts to improve consumer

[102] Our assessment of the benefits of the two options was set out in full in paragraphs 13.135 – 13.149 (Part C) of the April 2013 policy position.

confidence in non-geographic number ranges more generally. We also note that this decision accords with our policy preference that calls to 080 should be free-to-caller.

4.85 We now turn to our assessment of the options for the 116 range.

Impact assessment for the 116 range

4.86 116 numbers are designated for services of social value in accordance with the European Commission's decision in 2007 to reserve the 116 range for this purpose.[103] The EC's aim was to introduce "same number – same service" for certain "services of social value" across Europe (for example, a hotline for missing children or a helpline for victims of crime). 116 numbers are currently designated in the UK as either "Freephone" (i.e. the same as 080) or "free to caller" (i.e. free to call from both mobile and fixed line phones). Our assessment of which charging designation should apply to a particular number takes into account a number of different factors, such as the level of social value or need met by the service. Further background to the 116 range can be found in Section 11 (Part C) of the April 2013 policy position.

Summary of approach in April 2013 policy position

4.87 We explained in April 2013 that because the 116 range has only been introduced relatively recently, and there are only three numbers in active use (with two further designated but not yet allocated)[104], consumer understanding and awareness of the range, as well as usage, is low. Our concern was that, as the 116 number range becomes more widely used the existing pricing framework (where the numbers are either designated as free-to-caller or Freephone on a case-by-case basis) was likely to create the same issues around consumer confusion which are present on the 080 range. We also considered that, particularly in the context of the 080 range being made free-to-caller, it would be counterintuitive and could cause consumer confusion if we were to leave 116 numbers with two different charging arrangements. Our view was therefore that the potential for future consumer confusion justified intervention on the 116 range to protect consumers from the market failures that were likely to arise with further usage of the range.[105]

4.88 In line with our approach on the 080 range, we assessed the option of making the range consistently free-to-caller (i.e. designate all existing and future 116 numbers as free-to-caller[106]) against an alternative of setting a MMP for calls to those 116 numbers that are designated as Freephone. In carrying out our assessment we used two scenarios for the fixed and mobile origination payments that could occur under a free-to-caller approach:

a) the first assumed that both fixed and mobile origination charges remain unchanged (at 0.5ppm); and

[103] Decision 2007/116/EC (as amended by Decisions 2007/698/EC and 2009/884/EC).
[104] And only one 116 number has been designated as Freephone (rather than free-to-caller) – the 116006 'helplines for a victim of crime service'.
[105] See paragraphs 13.156 to 13.160 of the April 2013 policy position.
[106] This would remove the need for any specific assessment of the charging arrangements for each 116 number. As noted above, the existing procedure for designating the charging arrangements for 116 numbers involves balancing different factors such as the level of social value or need met by the service.

b) the second assumed that fixed and mobile origination charges were set at the pure LRIC of originating a call.

4.89 We considered both the free-to-caller and the MMP options against each of our assessment criteria.[107] In summary we provisionally concluded that there were clear benefits of making all 116 numbers free-to-caller, in particular we considered it would provide a clear, consistent pricing message which would be easily understood by consumers, protect them from potential confusion and address any horizontal externality effect. We considered all of this would encourage consumer confidence in using the range as it becomes more widely used. In contrast we considered there was a risk that setting a MMP could create consumer confusion which could negatively impact on consumer understanding of the existing 116 free-to-caller numbers.

4.90 We recognised that a free-to-caller approach may result in a potential risk of a negative impact on service availability on the currently designated 116 Freephone number (and any future 116 numbers which might have been given a Freephone designation), because the level of mobile origination charges could increase. However, we considered that that risk was reduced by our access condition and guidance as to how we would resolve any future dispute about whether origination charges were fair and reasonable.

4.91 We therefore provisionally concluded that making 116 numbers free-to-caller would create greater net benefits to consumers and be more effective at protecting them from potential harm as the range becomes more widely used (compared to setting a MMP). We said we were therefore minded to make the 116 number ranges consistently free-to-caller.[108]

Updated analysis and final conclusions

4.92 In response to our consultation on our draft 080/116 Dispute Guidance, two stakeholders commented on the application of our framework for assessing origination charges to the available evidence in order to generate assumptions about 116 origination charges for the purposes of our impact assessment. We respond to these comments in our final statement on the 080/116 Dispute Guidance, which we are also publishing today.[109] Notwithstanding these comments, we consider that our analysis of these likely charges remains valid. We have updated our estimates of the LRIC costs (see Annex 5), however, this does not change our overall assessment of the free-to-caller and MMP options for 116. We have therefore decided to make the 116 range free-to-caller in line with the provisional conclusions we presented in April 2013.

4.93 This decision will only require a change to the designation of the 116006 number in the Numbering Plan (because the other 116 numbers are already designated as ‘free-to-caller’ in the Numbering Plan). The 116006 number has not yet been allocated to an SP or brought into use and therefore, unlike our changes to the 080 range, we consider that this change should be brought into effect immediately. As explained in April 2013, we want to avoid a situation where an SP may be allocated this number and set it up on a Freephone basis, only for it to change to free-to-caller

[107] See paragraphs 13.166 to 13.181 of the April 2013 policy position.
[108] Our provisional conclusions were set out in paragraphs 13.182 to 13.186 of the April 2013 policy position.
[109] http://stakeholders.ofcom.org.uk/consultations/080-116-ranges/

in June 2015.[110] Our notification of the changes to the Numbering Plan in Annex 9 therefore includes an immediate modification of the designation of the 116006 number from 'Freephone' to 'Free-to-caller'.

Decision to make 080 and 116 free-to-caller

4.94 The stakeholder comments we received on the issues of further consultation and the revisions we have made to our underlying assumptions have not led us to change our overall assessment and therefore we have decided to implement the requirement for the 080 and 116 ranges to be free-to-caller. Our reasoning and justification for this decision is set out in detail in the April 2013 policy position, and supplemented by the assessment in this Section (and supported by Annexes 1, 2 and 5).

4.95 In summary this decision means that from 26 June 2015 (18 months from the date on which our modifications to General Condition 17 enter into force) the retail charge for 080 numbers will be set at a maximum price of zero. As discussed above, implementing a free-to-caller approach for the 116 range only requires a change to the designation of the 116006 number, which we are implementing immediately. All 116 numbers allocated in future will also be designated as free-to-caller. The modifications to the Numbering Plan which will implement these changes are set out in Annex 9.

4.96 We now turn to consideration of what this means at the wholesale level.

The access condition

Introduction and approach in the April 2013 policy position

4.97 We recognise that making 080 and 116 free-to-caller will prompt changes in wholesale arrangements between CPs and we are concerned that if we do not intervene at the wholesale level, imbalances in negotiating power could lead to connectivity issues and undesirable outcomes for consumers.

4.98 In the April 2013 policy position our view was that the appropriate and proportionate means of addressing the wholesale concerns we had identified was to set an access condition on TCPs (i.e. CPs that provide wholesale termination for calls to 080 or 116 numbers). That access condition would require TCPs to purchase wholesale call origination for consumer calls to 080 and 116 numbers on fair and reasonable terms (including charges). We also published draft 080/116 Dispute Guidance alongside the April 2013 policy position as to how we would approach any future dispute about whether 080 and 116 origination charges were fair and reasonable.

4.99 We specifically requested stakeholder comment on our proposal to require TCPs to provide notice of their initial revisions to origination charges to OCPs within one month of the condition being set – previously we had consulted on a notice period of two months.[111]

4.100 We received a wide range of stakeholder comments on this issue in response to the April 2013 policy position. The comments indicated some concern from stakeholders about how the access condition would operate in practice and whether it was the

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[110] See paragraph 15.16 in Section 15, Part C of the April 2013 policy position.
[111] Question 14.1 in the April 2013 policy position – see paragraphs 14.68 to 14.80 in Part C, Section 14.

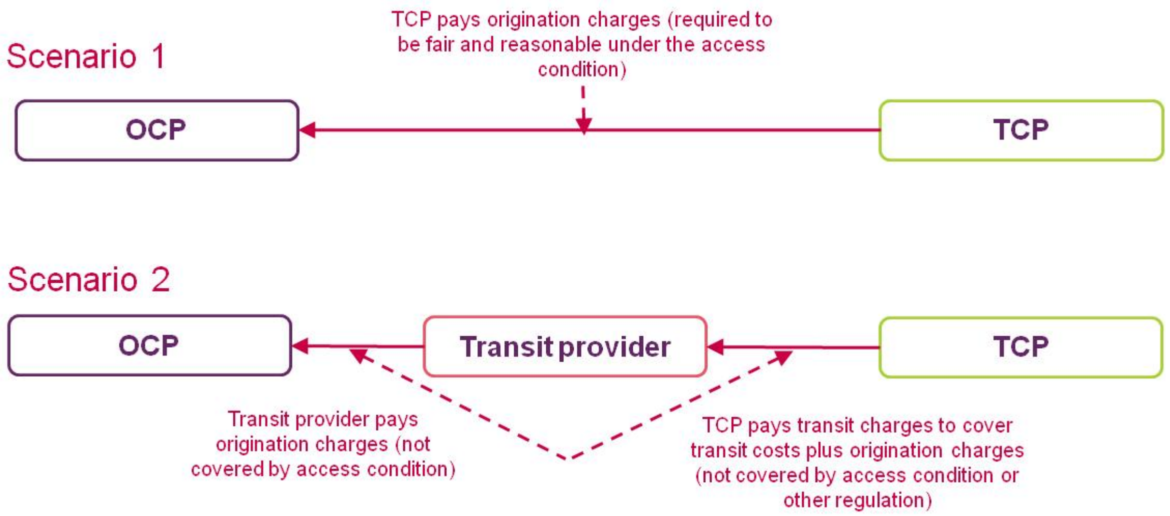
optimal approach. In addition we received comments on the design and scope of the access condition. We have set out comments, and our response, on the design of the access condition (including the notice period on which we consulted) in Annex 6. We have set out and responded to stakeholder comments about the drafting of the access condition in Annex 7.

4.101 The comments we received indicated a degree of concern about how the access condition would operate in practice. Therefore before we set out our decision on the access condition, including the aspects of it which we have changed in response to stakeholder comments, we have first set out below, at a high level, how we consider the access condition is likely to work in practice.

High level summary of the operation of the access condition

4.102 Broadly speaking, there are two types of 080/116 traffic - that which is routed directly from the OCP to TCP and that which is routed indirectly (e.g. through a transit provider). These scenarios are illustrated below.

Figure 4.8: Scenarios for routing of 080/116 traffic



4.103 The access condition will apply to all directly routed 080/116 traffic. We expect all TCPs with a direct interconnect will notify their proposed origination charges to the relevant OCPs on or around the same date (as the access condition will require this to be done within one month of the condition being set). We expect these notified charges will be the starting point for commercial negotiation.

4.104 We consider OCPs are unlikely to want to agree different charges with different TCPs because of their desire to minimise billing costs (as expressed in stakeholder responses – see paragraphs A1.88 to A1.90 in Annex 1). In practice, this means OCPs are likely to want certainty over the payment that will be made to them by BT before agreeing rates with other TCPs, given BT's relative position in the market. In the event a fixed or mobile OCP were able to reach a commercial agreement with BT, we consider it would be likely to act as an industry standard - both because of the desire on the part of both OCPs and TCPs to avoid incurring the additional costs and complexity associated with differentiated charges and because of BT's history as a price leader in this market.[112] As a result, we consider commercially agreed charges, although in theory negotiated between individual pairs of OCPs and TCPs, would be likely to converge towards a number of small charges, if not a single charge, for each of fixed and mobile originated calls.

4.105 We consider it relatively likely agreement will be reached between fixed OCPs and TCPs, given the narrow IAR for fixed origination payments.[113] However, we recognise the wider base case scenario range for mobile origination payments allows more scope for disagreement. We therefore recognise that the mobile OCPs may raise a dispute (under section 185 of the Act) over the level of mobile origination payment offered by TCPs, and that our determination of this dispute would then be likely to act as an industry standard. In the first instance, this is because we have seen similar determinations that were only legally binding on the parties be adopted throughout industry (e.g. the 03 determination).[114] Moreover, whilst we cannot entirely exclude the possibility, once we have set a fair and reasonable mobile origination charge in one dispute, we are unlikely to set a different charge in a subsequent dispute between different parties (absent a change in circumstances – e.g. if the second dispute occurs several years later and there has been a change in costs or other evidence in the interim period). This would create a strong incentive for any OCP receiving below the determined rate or any TCP paying above this to seek to re-negotiation their origination charge to the level we have determined, or to threaten to raise a dispute of their own.

4.106 As a result, we consider it very likely that origination charges for each of fixed and mobile originated calls will converge towards a small number of charges, if not a single charge - whether agreed commercially or via a dispute determination (or a combination of the two). As noted above, we expect that BT's charge may act as an industry standard and we expect this origination charge to be transparent to industry as a result of BT's practice of publishing wholesale charges in its Carrier Price List ('CPL'), which, for reasons we set out in more detail in paragraph A6.49 in Annex 6, we expect to continue under the new regime. Moreover, if the mobile origination payment is determined via dispute resolution, it will be publicly available in our final determination.

4.107 We recognise that the access condition does not apply to indirectly routed traffic and there is therefore no obligation on either the TCP or transit provider to purchase origination on a fair and reasonable basis. However, once the origination payment has been agreed or determined for directly routed traffic, we consider it likely that transit providers will notify OCPs of a revised origination payment for transited traffic equal to the rate payable for their own terminated traffic. At the same time, we expect transit providers will notify their TCP customers of an increase in their transit charge that exactly reflects this increase in origination payment. Whilst we recognise the potential for differentiated charges, we consider these are unlikely to arise in practice because of a combination of the billing costs associated with such charges, the threat of OCPs switching between transit providers and the threat of TCPs raising a dispute. We discuss the reasons for this in Annex 6.

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[112] A recent example of this price leadership is BT's tiered termination rates for 080 calls, which were subsequently implemented by other TCPs either on an identical or very similar basis.
[113] See paragraph 4.35 above.
[114] http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/closed-cases/all-closed-cases/cw_01058/

4.108 We are nonetheless aware that an absence of regulation for indirectly routed calls has the potential to create problems and consider the scenarios under which these problems might arise in more detail in response to stakeholder concerns in Annex 6. In general though, we consider these scenarios, whilst possible, are unlikely to arise given our understanding of current industry practices, which we consider likely to continue under the new regime. However, should any of these concerns materialise, we consider there are regulatory backstops in place that would result in them being addressed in a timely manner - either through dispute resolution or by extending the access condition to transit providers. As explained in paragraph A6.45 in Annex 6 we have decided not to apply the access condition in the transit scenario at present but we are open to revisiting this position if there is evidence that the concerns we have identified are materialising in practice.

Changes to the access condition as a result of stakeholder comments

4.109 In light of stakeholder comments, we have decided that the access condition will apply to all zero-rated calls to 080 or 116 numbers, rather than limiting its application to consumer calls only. We agree with the concerns raised by stakeholders that the same risks around interconnection delays or failures and the risk of an extended period of uncertainty could arise for business calls to voluntarily zero-rated 080 and 116 calls in the absence of the requirements of the access condition. This is explained in more detail in Annex 6.

4.110 We have also made some minor amendments to the drafting of the access condition in response to stakeholder comments, in order to clarify the scope of the obligations imposed – see Annex 7.[115]

European consultation

4.111 Under Article 7 of the Framework Directive (as amended), National Regulatory Authorities ('NRAs') are required to notify their draft decisions to the European Commission ('EC'), the Body of European Regulators for Electronic Communications ('BEREC') and other NRAs upon completion of their own domestic consultation and having taken account of all stakeholder responses. The EC, BEREC and other NRAs may make comments within a month. The notifying NRA needs to take utmost account of any EC and BEREC opinions.

4.112 Therefore, having taken account of consultation responses and having made modifications in the light of these comments, we notified our draft access condition to the EC, BEREC and other NRAs, together with a draft explanatory statement on 22 October.[116]

4.113 On 22 November, the EC issued its decision letter. We received no other comments from the EU consultation. The EC did not object to our access condition but it made the following comments:

[115] In addition to the amendments made in response to stakeholder comments, we have also made some other minor, non-substantive modifications. In particular, we have added a definition of a 'Public Pay Telephone', which cross-refers to the definition that is used in the General Conditions. See Annex 7, paragraphs A7.153 to A7.164 for details of these changes.

[116] http://stakeholders.ofcom.org.uk/binaries/consultations/simplifying-non-geo-no/statement/statement.pdf

"*As already stated in several previous cases, the Commission is of the view that Article 5 of the Access Directive must be used with caution, taking into account the general principle under the EU electronic communications regulatory framework that regulation should only be imposed when necessary and must be proportionate to the market failure identified. In view of the specific market dynamics and consumer protection concerns arising in connection with the use of 080 and 116 services in the UK, the Commission does not at this point object to Ofcom's proposal to impose an access obligation in order to ensure end-to-end connectivity for end-users of 080 and 116 services.*

The Commission invites Ofcom, however, to monitor the renegotiation by the CPs of wholesale origination charges and to withdraw such a symmetrical access obligation as soon as most CPs have agreed on new wholesale origination charges. Furthermore, should the identified competitive problems persist and if the end-to-end connectivity issues cannot be adequately addressed by Ofcom using its ex post competition powers, the Commission asks Ofcom to assess whether running a market analysis would not be more suitable to better understand the competitive situation at issue, including the countervailing buying powers at stake. Ofcom could implement an SMP-type of call origination wholesale market regulation only to the extent that a clear market failure is identified in respect of the provision of the 080 and 116 service in the UK."

4.114 We welcome the EC's acceptance that our access condition is justified.

4.115 We have taken utmost account of the EC's comments and will monitor the renegotiation by CPs of wholesale origination charges. We have also carefully considered the EC's request that we withdraw the access condition as soon as most CPs have agreed on such charges. We are, however, concerned that this approach would not offer sufficient certainty to the market and there is a risk that it would undermine the purpose of the access condition.

4.116 If CPs entered into negotiations knowing that the obligations in the access condition were to be removed shortly after an agreement had been reached, this might have the effect of undermining those negotiations or, even if they were concluded, lead to negotiations being reopened once the condition was withdrawn (we note that a typical interconnection agreement will provide a mechanism for charges to be revised on 1 to 2 months' notice). We do not consider that current market conditions are such that agreement on origination charges would endure once the condition was removed as the risks and individual interests we have set out earlier will not have changed sufficiently. In particular, we note the lengthy disputes and appeals over interconnection charges for calls to non-geographic numbers (including 080 numbers) that have persisted over the past four years. Comments we have received from stakeholders (see Annex 6) indicate that they share these concerns – in particular the need for certainty within the market.

4.117 However, we acknowledge that market conditions could change over time, particularly once a free-to-caller approach has been implemented and CPs have adapted to the new revenue flows. Accordingly, we will consider whether it is appropriate to withdraw the access condition once wholesale market conditions have stabilised. Specifically, we will include consideration of the market conditions that led us to impose this access condition as part of the proposed post implementation review – see paragraph 6.43 in Section 6.

4.118 We note also the EC's suggestion that if competitive problems persist we might consider undertaking market analysis. We would accept that there may be a future need to consider competitive conditions in this market. In our recent NMR statement we deferred a consideration of the market for the termination of non-geographic calls due to the proposed changes we were introducing in this review.[117] However, we noted that we would consider the need for market analysis (of the termination market for non-geographic calls) once our NGCS changes had been implemented.

Decision to impose the 080 and 116 access condition

4.119 For the reasons outlined above, and in more detail in the April 2013 policy position, we have therefore decided that, alongside our decision to make the 080 and 116 ranges free-to-caller, we will also impose an access condition on CPs that terminate calls to 080 or 116 numbers. We consider that without this condition, there is a risk that imbalances in negotiating power may give rise to interconnection delays or failures, the risk of an extended period of uncertainty, and origination payments that would not necessarily be in the interests of consumers.

4.120 The access condition requires TCPs providing wholesale termination for 080/116 numbers:

- to purchase wholesale origination services for all zero-rated calls to 080 or 116 numbers (other than calls from a public payphone) from any requesting OCP;
- to do so on fair and reasonable terms and conditions (including charges); and
- by 26 January 2014, to notify any OCP with whom it has an existing interconnection agreement of its proposed revision to the charges for wholesale origination.

4.121 The notification of this access condition is set out in Annex 11.

4.122 We are also today issuing our final 080/116 Dispute Guidance. This sets out how we would expect to resolve any future dispute as to whether origination charges for free-to-call 080 or 116 numbers are fair and reasonable.[118]

[117] See paragraph 6.47 of the NMR Statement.
[118] See: http://stakeholders.ofcom.org.uk/consultations/080-116-ranges/

Section 5

Legal instruments and tests

Introduction

5.1 In Sections 3 and 4 we set out our decisions:

5.1.1 to introduce the unbundled tariff; and

5.1.2 to impose a maximum retail price of zero for calls made by consumers to the 080 and 116 number ranges.

5.2 In this section, we provide a summary of the legal powers that we are using and the legal instruments that we are making in order give effect to these regulatory changes. We also explain why we consider these legal instruments are consistent with our statutory duties and other relevant legal tests.

Legal powers to introduce unbundled tariff and free-to-caller

5.3 In order to implement the unbundled tariff and to make 080/116 numbers free-to-caller, we are relying on a wide range of powers to set or modify conditions and other legal instruments. These were explained in detail in Section 6 and Annex 13 of the April 2013 policy position[119] and we do not set them out again here. In essence, the powers we are relying on enable us:

5.3.1 to require that the retail price of calls to non-geographic number ranges comprises the consumer's AC and the applicable SC for the number called, to set tariff principles in relation to the structure of the AC and SC and to set a maximum cap on the SC which may be set for a particular non-geographic number range; and

5.3.2 to require that the maximum retail price of calls to the 080 and 116 number ranges is set at zero and to regulate the purchase of wholesale origination services for calls to these number ranges.

5.4 In Annex 7 of this statement we set out stakeholder comments in relation to the scope of our legal powers to introduce the unbundled tariff and to make the 080/116 ranges free-to-caller, together with our response to those comments. In summary, having carefully considered these comments, we remain of the view that the regulatory interventions described in this statement fall within the scope of our powers and are both appropriate and proportionate.

Legal instruments

5.5 In the April 2013 policy position we consulted on the legal instruments that we proposed to use to implement the unbundled tariff and to make calls to 080 and 116 numbers free-to-caller. Specifically, we proposed to modify General Conditions 12, 14, 17, 23 and 24, the PRS Condition and the Numbering Plan. We also proposed to

[119] Section 3 of the April 2013 policy position also set out, at a high level, our general powers and duties under the Act and our powers and duties in relation to telephone numbering.

set an access condition on CPs that terminate calls to 080 and 116 numbers and a new condition in relation to telephone numbering which binds non-providers.

5.6 In Annex 7 we summarise the stakeholder comments we received in response to the draft legal instruments on which we consulted, and set out our response to those comments. In light of these stakeholder comments, we have made a number of amendments to the legal instruments that we proposed in April. In particular:

5.6.1 As set out in Section 3, we have decided that the inclusion of the AC in a bundle shall be permitted to vary by number range, provided that outside of the bundle the AC is charged at the same rate for all number ranges (in line with our requirements for a single AC per tariff package). We have amended the drafting of our modification to GC17 accordingly.

5.6.2 As set out in Section 4, we have decided that the access condition should apply in respect of all 080/116 calls which are zero-rated at the retail level, whether as a result of our regulation of consumer calls to these number ranges or because of a voluntary decision by the OCP to zero-rate business calls to these ranges. We have amended the drafting of the access condition accordingly.

5.7 These and the other amendments we have made are explained in Annex 7 and are reflected in the final legal instruments that are set out in full in the Notifications at Annexes 8 to 12 of this statement.[120]

Legal tests and statutory duties

5.8 In Section 6 of the April 2013 policy position, we set out the specific legal powers that we proposed to rely on to set or modify (as the case may be) each of the legal instruments described above. We remain of the view that each of the final legal instruments remains within the scope of the powers that were cited in that section.

5.9 We may not set or modify (as the case may be) the legal instruments described above unless we are satisfied that the condition or modification is objectively justifiable, not unduly discriminatory, proportionate and transparent.[121] We are satisfied that our modifications and conditions meet these requirements.

5.10 In particular, in relation to the conditions and modifications relevant to the unbundled tariff, we consider them to be:

5.10.1 **objectively justifiable**, in that they seek to address the retail market failures and resulting harmful impacts that we described in Section 4 of the April 2013 policy position in relation to 084, 087, 09 and 118 numbers;

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[120] We also anticipate that modifications will be required to the numbering application forms prior to the date on which the regulatory changes (i.e. the introduction of the unbundled tariff and free calls to 080 and 116 numbers) take effect. However, in light of the 18 month implementation timeframe, we intend to separately consider the modifications that are required to the numbering application forms closer to the date on which the revised forms will need to be made available to CPs.

[121] See section 47(2) of the Act in relation to the General Conditions and the access condition; section 59(4) in relation to the condition binding non-providers; section 120(5) in relation to the PRS Condition; and section 60(2) in relation to the Numbering Plan. However, we are not required to satisfy ourselves that the setting of a general condition is objectively justifiable (see section 47(3)).

5.10.2 **not unduly discriminatory**, in that they apply equally to all OCPs, TCPs or SPs (as relevant) that originate or terminate calls to these numbers or supply services using these numbers;

5.10.3 **proportionate**, in that the modifications are the minimum necessary to achieve the objective outlined above. We explained in Section 8 and Annex 19 of the April 2013 policy position why we consider that alternative regulatory approaches (including setting maximum retail prices and SMP regulation) would fail to address our concerns. We also explained in Annex 13 of the April 2013 policy position and in Annex 7 of this statement that we consider an alternative regulatory approach put forward by a stakeholder to be inappropriate and disproportionate; and

5.10.4 **transparent**, in that the modifications are set out in full in Annexes 8 to 12 and are explained in detail in this statement. Furthermore, the modifications themselves seek to increase transparency for consumers in relation to the charges for calling these numbers and receiving services provided by means of those numbers.

5.11 In relation to the conditions and modifications required to make the 080 and 116 ranges free-to-caller (including the access condition), we consider them to be:

5.11.1 **objectively justifiable**, in that they seek to address the retail market failures and resulting harmful impacts that we described in Section 4 of the April 2013 policy position in relation to the 080 and 116 ranges, and (in respect of the access condition) the concerns that we described in Section 14 of the April 2013 policy position as well as Section 4 and Annex 6 of this statement in relation to the wholesale layer under a free-to-caller approach;

5.11.2 **not unduly discriminatory**, in that they apply equally to all OCPs and TCPs (as relevant) that originate or terminate calls to 080 or 116 numbers;

5.11.3 **proportionate**, in that the modifications are the minimum necessary to achieve the objective outlined above. We explained in Sections 13 and 14 of the April 2013 policy position why we consider that alternative regulatory approaches (including a MMP approach and SMP regulation) would fail to address our concerns. We also explained in Annex 13 of the April 2013 policy position and Annex 7 of this statement that we consider an alternative regulatory approach put forward by a stakeholder to be inappropriate and disproportionate; and

5.11.4 **transparent**, in that the modifications are set out in full in Annexes 8 to 12 and are explained in detail in this statement, and the modifications themselves are also intended to promote consumer confidence in relation to the price of calls to 080 and 116 numbers, and thereby to increase transparency in the market.

5.12 We consider that we are fulfilling our general duty in relation to our telephone numbering functions, as set out in section 63 of the Act, by:

5.12.1 **securing the best use of telephone numbers**, in that our changes are likely to ensure that consumer demand for access to NGCS is not distorted by a lack of pricing awareness or other market failures, and that SPs are able to select a number range whose charge is much more reflective of their desired outcome with respect to the cost of a call; and

5.12.2 **encouraging efficiency and innovation**, in that our changes are likely to ensure, as a result of improved price awareness, that consumers are able to make purchasing decisions commensurate with their own individual consumption preferences and CPs are therefore incentivised to set prices that better reflect consumers' relative demand preferences. We also consider that our proposals will result in improvements in pricing efficiency (in particular, by addressing the horizontal and vertical externalities) and improvements in SPs' incentives to innovate and invest in the NGC market and to promote their services.

5.13 We also consider that our changes are consistent with our principal duty under section 3 of the Act, and the Community requirements set out in section 4 of the Act. In particular:

5.13.1 we consider that our changes will result in significant benefits to **consumers and citizens** (sections 3(1), 3(5) and 4(5)) by addressing consumers' poor awareness and confidence in the pricing of NGCS, improving vulnerable consumers' access to socially important services and encouraging SPs to improve the quality, variety and innovative nature of their services;

5.13.2 we consider that the unbundled tariff regime will also **promote competition** (sections 3(1)(b), 3(4)(b) and 4(3)) between CPs, and potentially SPs, in relation to their charges for calls to non-geographic numbers;

5.13.3 as explained above, we consider that our changes will result in improvements in **efficiency, investment and innovation** (sections 3(4)(d));

5.13.4 in carrying out our review, we have had regard to the needs of **vulnerable consumers** (section 3(4)(h) and (i)), in particular through our Equality Impact Assessment (see Annex 12 of the April 2013 policy position) and by the explicit consideration of the extent to which our changes would impact on vulnerable consumers' access to socially important services;

5.13.5 we have had regard to the **opinions of consumers and members of the public generally** (section 3(4)(k)), through consumer surveys, extensive consultation and engagement with various bodies representing consumer interests; and

5.13.6 we have also had regard to the principle that regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and to other principles of **best regulatory practice** (section 3(3)). In particular, we explained in detail in the April 2013 policy position (and in the April 2012 consultation) why we consider that regulatory intervention is required, and we explain above why we consider that our changes are proportionate and transparent.

Section 6

Implementing the changes

Introduction

6.1 In this section we set out further details about the actions that are needed to implement the decisions that we have made and the changes to the NGCS regime.

Implementation plan

6.2 In the April 2013 policy position, we explained that we have devoted considerable attention to the way in which the regulatory changes that we proposed would be implemented.[122] We explained that throughout the policy development process we have sought to involve stakeholders in planning how these changes might best be implemented. We also anticipated that bilateral and multilateral meetings with key stakeholders would play an expanded role in ensuring that the planning and delivery of changes needed for successful implementation take place in good time.

6.3 In both our April 2012 consultation and the April 2013 policy position we set out stakeholders' comments received and our views about implementation of the unbundled tariff and free-to-caller regime in light of these comments.[123] Since April 2013 we have continued to engage with stakeholders and have carefully considered comments about implementation made in response to the April 2013 policy position.

6.4 We explained in April 2013 that ensuring that all stakeholders understand that changes that are needed is an important role that rightly falls to Ofcom. We see three categories of work necessary to secure successful implementation:

- **communications**: there are two elements to this workstream; firstly ensuring that consumers (and other stakeholders) are aware of the forthcoming changes; and secondly, in relation to the unbundled tariff, ensuring that the ongoing requirements for the communication of the AC and SC are met;

- **industry systems and processes:** ensuring that the necessary arrangements including systems and contractual arrangements are in place in readiness for when the regulatory changes take effect. We include within this category the work that is needed to ensure that changes (such as the need for TCPs/hosting providers to notify SP customers of origination payments and the establishment of SC price points) are communicated through the value chain; and

- **Ofcom systems and processes:** ensuring that any changes to Ofcom's systems and processes (both commercial and technical) are in place in good time. We also include within this category Ofcom's engagement with bodies which will be responsible for securing compliance with the advertising requirements for unbundled tariff numbers.

[122] See paragraphs 5.9 to 5.20 in Section 15 of the April 2013 policy position.
[123] See Sections 5 (Part A), 10 (Part B) and 15 (Part C) of the April 2013 policy position (as well as Annexes 25 (Part B) and 31 (Part C)), and previously in Sections 12 (Part B) and 17 (Part C) of the April 2012 consultation.

6.5 We have worked with stakeholders to plan the framework necessary to deliver these three categories of work. This work has been preparatory in nature and includes:

- creation of an Ofcom implementation project team;
- formation of industry working groups for communications, and for industry systems and processes;
- bilateral engagement with key CPs and other stakeholders about their ability to commit resources to achieve successful implementation;
- production of an initial high level draft view of key milestones for industry to comment on; and
- ensuring that the new tariff structure could be accommodated within a new number management system ('NMS') that Ofcom is in the process of developing.

6.6 In the following subsections we set out the progress that has already been made on each of the three work categories together with more detail about the work that will be needed over the coming 18 months to successfully implement the changes.

6.7 The majority of the implementation plan outlined below is related to the implementation of the unbundled tariff specifically, because this requires changes to a wider range of systems and processes compared to making 080 and 116 free-to-caller. One of the key implementation issues relating to making 080 and 116 free-to-caller is the agreement of revised wholesale origination charges. We discuss this issue in more detail in Annex 6.

Communications

6.8 The changes that our reform of the non-geographic numbering regime will introduce are significant. Communicating these changes clearly and in a way that instils confidence is in the best interests of all stakeholders. Consumers (and therefore, CPs and SPs) will only benefit from the changes if they understand the new regime well enough to have the confidence to use non-geographic numbers. Delivering the required confidence has two components:

- first, raising awareness and explaining the changes and choices that will need to be made by consumers of non-geographic numbers and also CPs and SPs; and
- second, the ongoing requirement for SCs and ACs to be communicated to consumers. It is important that CPs and SPs are ready to communicate the AC and SC, respectively, from the date on which the regulatory changes enter into force.

6.9 We have developed a communications plan to deliver both of these components. While Ofcom will play a central role, successful communication is dependent on the active support and contribution of a range of stakeholders including CPs and SPs. A communications working group made up of CPs and other organisations which have a direct interest has been formed to ensure that industry takes a joined-up and co-ordinated approach to consumer and other communications activities including the communication of AC and SC. The working group brings together representatives from the marketing teams of CPs. This group will meet monthly to create content and resources that can be used by all stakeholders to ensure consistent messaging both to consumers and to SPs that use NGCS services.

6.10 Running alongside will be targeted communications activities designed to reach key stakeholders including consumer and voluntary groups, government departments, policy makers, and co-regulators. We will seek to engage with these groups to ensure that they are aware of progress and to give them an opportunity to contribute advice and action.

Communicating the changes – raising awareness

6.11 In both April 2012 and April 2013 we set out the type of activities that Ofcom, CPs and SPs might need to take to ensure that all consumers are aware of the regulatory changes.[124] We recognise that to ensure that consumers are aware of these changes will require a major public awareness and industry information campaign. While the public awareness campaign will be led by Ofcom it will rely on the active support of CPs and key SPs. The main elements of the campaign are likely to include:

- the use of an overarching identity for the project to be used across all communications activities;
- a NGCS website that will explain the changes and to which businesses and organisations can link to as a central resource for the campaign. We anticipate that the NGCS site will go live in March 2014;
- content and resources that can be used in print and online by stakeholders to inform consumers and SPs about the changes. We anticipate a number of resources and content being made available from early 2014 onwards;
- consideration of whether, as we approach the implementation date, targeted print adverts in selected newspapers that aim to reach a broad cross section of the population would be effective;
- promotional support from CPs and SPs to raise consumer awareness. We will seek to maximise access to CPs' and SPs' customer communication channels including websites, SMS, retail sites, helplines, billing and existing marketing plans from mid 2014 onwards; and
- use of e-comms and social media. We will draw on content and resources created by Ofcom and the communications working group to increase awareness among consumers and to direct enquiries to the NGCS website. The necessary content and resources should be available from early 2014 onwards.

Communicating the SC and AC

6.12 The ongoing requirement for the SC and AC to be communicated to consumers is central to the success of the unbundled tariff. Communication of the AC by the OCP and of the SC by the SP will provide the conditions necessary for AC and SC competition while also providing the transparency that consumers need to make informed choices. In Section 3 we have summarised our decisions about the

[124] See paragraph 5.24 of the April 2013 policy position.

appropriate price publication obligations that will apply to OCPs and SPs and Section 6 sets out the requirements in the legal instruments.[125]

6.13 We will continue to work closely with PhonepayPlus ('PPP'), the Committee of Advertising Practice ('CAP') and the Broadcast Committee of Advertising Practice ('BCAP')[126] to ensure that any changes to existing Codes and/or guidance (if required), together with any new guidance, is published as far as possible in advance of the date on which the regulatory changes take effect (and ideally six months in advance of that date). This will give SPs the time necessary to design, and have available, compliant marketing and advertising material. PPP in particular noted in their response to the April 2013 policy position that they will need to review the level of the premium rate spending caps (for example live entertainment and sexual services are limited to a maximum of £25.54 plus VAT per call). In addition it confirmed that it will update its guidance on pricing transparency in time to reflect the new tariff structure.[127]

6.14 As explained in further detail below (paragraphs 6.37 to 6.38), we will also be updating the Broadcasting Code Guidance and the wording set out in this guidance will provide an indication to SPs of the type of price messages that are likely to be considered acceptable when promoting their SCs.

6.15 Ensuring that CPs and SPs are aware of the requirements for communicating the AC and SC and where possible bringing consistency to the use of language will be a key objective for the communications working group.

Industry systems and processes

6.16 We set out a high level summary of the actions that would be necessary in-order to successfully implement the new regime in the April 2013 policy position.[128]

6.17 While Ofcom will play a central role in co-ordinating and leading the actions needed, including changes to industry systems and processes, successful implementation will require a process of collaborative planning and delivery by a wide range of industry stakeholders. The main focus will be on CPs, particularly for OCP billing systems, contractual arrangements, and SCs. SPs and third party intermediaries such as billing providers will also have an important contribution to make.

6.18 We see three key tasks to be fulfilled over the implementation period:

- **identifying requirements:** Identifying system and process needs from both a commercial and technical perspective for CPs and SPs. This task will include identification of issues that need to be addressed and the risks that need to be tracked;

[125] For more details on these requirements see paragraphs 10.5 to 10.30 in Section 10 (as well as Annex 24) of the April 2013 policy position.
[126] CAP and BCAP own, write and maintain the UK advertising codes, which are administered by the Advertising Standards Authority ('ASA'). The ASA previously advised that it would be able to adjudicate under its existing Code rules on advertisements that omitted SC price information – i.e. a Code change would not be required (see paragraph A24.56 in Annex 24 of the April 2013 policy position).
[127] PPP, April 2013 policy position response, p.3.
[128] See paragraphs 5.38 to 5.40 the April 2013 policy position.

- **identifying milestones and establishing a roadmap**: our aim is, together with key stakeholders, to produce and refine a roadmap of key milestones for implementation that can be used across industry as the basis for planning; and

- **monitoring progress and confirming readiness:** it is important that both Ofcom and our stakeholders are confident that systems and processes will be ready for when the changes for the unbundled tariff and free-to-caller are implemented. We have developed an assurance framework able to provide this confidence at the broad industry and key individual stakeholder levels.

6.19 There are three engagement methods that we will utilise to co-ordinate and lead the changes that are necessary:

- implementation working groups;

- bilateral engagement; and

- industry forums and events.

6.20 In order to co-ordinate and lead the work required for implementation we have formed standalone implementation working groups for OCPs and TCPs.[129] These working groups are chaired by Ofcom and will, where there are sufficient agenda items, meet monthly. It is likely that where appropriate (for example, for billing issues or wholesale arrangements) sub-working groups or additional working groups, will be formed to deal with specific issues. We encourage the attendance and participation of as wide a range of CPs as possible.[130]

6.21 The diverse nature of SPs suggests that a single SP working group would not be an effective method of co-ordination. However, we hope to meet with a range of SPs to understand whether there is any appetite for specific working groups. We will also consider whether other means of engagement beyond bilateral meetings such as forums or events would better meet the needs of SPs, both with regard to awareness of the implementation programme and the effectiveness of CPs' engagement with them in meeting their transition needs.

6.22 Bilateral meetings between Ofcom and stakeholders have played an important role throughout the policy development process and will continue to do so during implementation. Bilateral meetings at a working level between Ofcom and stakeholders' implementation teams and at more senior levels will provide a means of understanding progress, dealing with specific issues as they arise, facilitation and escalation, if required. Bilateral meetings will in particular provide a means of understanding the readiness of key stakeholders in advance of the implementation date.

6.23 We will continue to use the industry NGCS Focus Group to elicit industry views and as a means of providing updates on progress towards implementation.[131] We have also begun to engage with trade associations and representative bodies in order to understand how we might best communicate with their members who may include

[129] The commercial relationships and focus of OCPs and TCPs means that separate working groups are likely to be more constructive.
[130] http://stakeholders.ofcom.org.uk/telecoms/policy/non-geo-call-services/
[131] http://stakeholders.ofcom.org.uk/telecoms/groups/nts-focus-group/notes-of-meetings/

CPs, SPs and intermediaries. Where appropriate we will attend events and meetings and would hope to use existing communication channels, wherever possible.

Billing systems

6.24 We explained in our April 2013 policy position that putting in place billing systems that are capable of accommodating the unbundled tariff will be a key milestone on the road to successful implementation.[132] In this statement we have confirmed that the minimum number of SC price points that OCPs' billing systems must be able to accommodate is 100 (with 80 being made available upon implementation in June 2015 and a further 20 price points 12 months later, i.e. by June 2016).[133]

6.25 We have consistently made clear our view that for many OCPs, in particular those with legacy systems, the changes needed to billing systems will be the greatest challenge. We recognise that the integrated nature of OCP systems may mean that there is considerable variation in the time it takes individual CPs to develop and test a system capable of accommodating the required number of SC price points However, we will be seeking confirmation from OCPs by the end of December 2014 that they are confident that this process will be complete in time for implementation in June 2015.

6.26 A key input for these upgraded billing systems will be the determination of the SC price points that the system will accommodate. This is discussed in the following paragraphs.

Service charge price points

6.27 We highlighted in the April 2013 policy position that there were a number of actions that were dependent upon the establishment of the SC price points and we recognised the importance of TCPs and SPs being clear about what SC price points were available to them.[134]

6.28 In response to stakeholder comments we have set out more guidance on SC price points which we consider it would be fair and reasonable for an OCP to provide on implementation of the unbundled tariff. The guidance is set out in Annex 4. This guidance should help facilitate the process of establishing a first tranche of SC price points which reflect current outpayment levels in a timely manner. In turn, this should assist TCPs and SPs to make well-informed decisions about the SC which will apply to existing unbundled tariff number blocks, as well as enabling them to update any communications material to include their SC ahead of implementation. Our expectation is that the necessary steps will have been taken by June 2014 to enable the significant majority of TCPs/SPs to select an SC for existing services which reflects the level of current outpayments.

6.29 We have also set out in Annex 3 a process which we consider will facilitate the determination of new SC price points which differ from current outpayments made on these ranges. While we expect industry to take the lead in developing a process of this nature, we will continue to work closely with stakeholders during the implementation phase to provide assistance and guidance where appropriate. We recognise that establishing such a process and then using it to determine new SC

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[132] See paragraph 5.42 of the April 2013 policy position.
[133] See GC17.31, discussed in Annex 7.
[134] See paragraphs 5.43 to 5.45 of the April 2013 policy position.

price points will take more time. However, in order that OCPs are in a position to determine SC new price points in advance of implementation, we consider this process will need to be in place by December 2014.

6.30 We will continue to monitor OCPs' development of their SC price points during the implementation period and keep under review whether there is any further assistance we can provide to facilitate the process.

Ofcom's systems and processes

6.31 We explained in April 2013 that implementing the new regime will also require significant work by Ofcom. This will include the amendment of existing systems and processes (such as those used to manage the allocation of telephone numbers) as well as modifications to the numbering applications forms, the Broadcasting Code and its Guidance.

Updated Numbering Management System

6.32 Ofcom has a duty under Section 56(3) of the Act to keep day to day records of the telephone numbers allocated by them. In accordance with this duty, Ofcom decided earlier this year to procure a new Web-based NMS that simplifies and automates our numbering processes and ensures that we have sustainable capabilities to manage future demand for numbers effectively.

6.33 As set out earlier, we have ensured that the new NMS would have the capability to accommodate the new unbundled tariff structure. It will therefore include the SC applying to each allocated number block for the 084, 087, 09 and 118 number ranges, which will provide the industry with a single point of reference of SCs.

6.34 The procurement of this system has been carried out under the European Union process ('OJEU'), and delivery of the system is expected in June 2014.

Numbering application forms

6.35 As we noted in April 2013, we will need to modify the numbering application forms ahead of the implementation of the new regime to reflect the changes to the structure of non-geographic numbers.[135] We intend to separately consider, and consult on, the modifications that are required to the numbering application forms closer to the date on which the revised forms will need to be made available to CPs.

6.36 In addition we will shortly be consulting on broader changes to the numbering application process. Therefore any revisions we make to take account of the changes in this statement will also need to reflect the updated process for applying for numbers.

Amendments to the Broadcasting Code

6.37 We explained in the April 2013 policy position that the current requirements relating to the use of premium rate telephone numbers by broadcasters, and in particular the clarity of cost information for those calls in Ofcom's Broadcasting Code, and the references to these requirements in accompanying guidance notes, were likely to

[135] See paragraph 2.51 of the April 2013 policy position.

need updating to reflect the changes introduced by the implementation of the unbundled tariff.[136]

6.38 It is our aim therefore to have completed any formal and informal consultation and published our decisions on any necessary changes in good time before the unbundled tariff regime takes effect.

Timetable

6.39 We have throughout the policy development process recognised that the changes needed to introduce the unbundled tariff and free-to-caller regime will require significant action by a wide range of stakeholders. The 18 month timeline for implementation reflects the significant nature of these changes.

6.40 We have set out below a summary of the key milestones that we have identified for the purposes of implementation in 18 months. Our aim is to provide a framework within which CPs can begin to plan and obtain the resources needed for implementation. We are seeking the views of OCPs and TCPs on the viability of these draft milestones and intend to finalise them (having had regard to the views of OCPs and TCPs) through working group meetings being held in January 2014:

- TCP notification of origination charges for free-to-caller – 26 January 2014
- Ofcom content and resources available for communications – early 2014;
- NGCS website goes live – March 2014;
- TCPs/SPs able to select SCs for existing services which reflect current levels of outpayments - June 2014;
- process for determining new SC price points established – December 2014;
- OCP confirmation that billing systems will be ready for implementation – December 2014; and
- transition of non-geographic numbers to new number management system complete – late 2014; and
- unbundled tariff and free-to-caller regime takes effect – 26 June 2015.

6.41 A collaborative planning and delivery approach will give the best possible chance of ensuring that both Ofcom and industry are ready for implementation of the new regime in June 2015. We expect to be in a position to confirm that both Ofcom and key stakeholders will be ready for implementation in December 2014.

Evaluation after implementation

6.42 As set out in the April 2013 policy position, we recognise that there are several risks involved with implementing such a large scale change in the market and we are therefore committed to monitoring the impact of the changes and, if there is evidence

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[136] See paragraphs 5.48 to 5.53 of the April 2013 policy position.

of concerns, undertaking a review and evaluation of the efficacy and impact of these remedies after implementation has taken place.[137]

6.43 In April 2013 we set out a list of key factors we would be monitoring, as well as a number of areas we considered warranted specific attention and which we would be focussing on as part of a review.[138] Those lists remain appropriate and we continue to be committed to focussing on those specific areas for review. However, in light of the revisions to our approach from the April 2013 policy position, we consider there are three additional areas which are also likely to warrant specific attention as part of the review:

- the approach to inclusion of the AC in call bundles (see Section 3);
- the wholesale origination charges for free-to-call 080 and 116 numbers where a transit provider is involved in the routing of the call (see Section 4); and
- monitoring of agreements over wholesale origination charges and the stability of the wholesale market for 080 and 116 in the light of comments from the EC (see Section 4).

[137] See paragraphs 5.54 to 5.56 of the April 2013 policy position.
[138] See paragraph 5.55 of the April 2013 policy position.